



## New Mexico Statistical Analysis Center



VS



# Felony Case Initiation Type:

## The Use of Grand Jury versus Preliminary Examination in New Mexico

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## Introduction

Since its inception, the United States has used the grand jury system. Grand juries are an independent group of citizens whose job is to determine whether there is sufficient evidence to charge an individual with a crime, thereby ensuring that the prosecutor does not abuse their discretion. Legal scholars, though, have long raised concerns about the use of grand juries. At least as early as the 1800s, scholars and others have questioned whether the practice should be abolished. They cite concerns that, in practice, not only are grand juries costly, they also do not result in the intended protections (see, e.g., Kinghorn, 1881; Younger, 1955). Despite this long-standing controversy, the criminal justice system continues to use grand juries at the federal level and in jurisdictions across the United States, including in New Mexico.

In 2018, however, the Bernalillo County District Court (the largest judicial district in New Mexico) reported that they would be limiting the number of grand juries held from approximately 20 times per month to six (Guadaro, August 6, 2018). Proponents in New Mexico argue that preliminary examinations—the alternative to grand jury—are more transparent, cost-effective, and lead to improved case outcomes among cases that proceed to district court, mirroring many of the same arguments made nationally and historically. Opponents, on the other hand, argue that in the long run, preliminary examinations are not cost-effective and may have an adverse effect on crime (*ibid*).

The purpose of the current study is to understand the processing of felony cases in New Mexico and the influence of prosecutorial discretion in that process. Specifically, the study explores case initiation type and whether this is associated with the ultimate disposition of cases. Further, the study reviews the efficiency of preliminary examinations. Finally, we examine whether offense type, jurisdiction, and COVID-19-related restrictions are related to these decisions and procedures.

## Overview of felony case processing in New Mexico

New Mexico has a two-tiered system for processing criminal felony offenses. The typical felony case begins when the investigating police officer presents a complaint (or arrest warrant) and a statement of probable cause (or affidavit in support of arrest warrant) to a magistrate or metropolitan court judge. The prosecutor reviews the file to determine whether to pursue the case, and if so, which charges to file. If the prosecutor does not dismiss the case, it proceeds to a first felony appearance (arraignment) where the defendant is advised of their rights. The lower court does not have jurisdiction over felony cases, therefore, the prosecutor must then initiate the case in district court for ultimate adjudication. In order for this to occur, there must be a determination of whether there is sufficient evidence (probable cause) to justify bringing the defendant to trial on felony charges.

The New Mexico Constitution (Article II, Section 14) establishes two primary options for prosecutors to initiate cases in district court: 1) through a preliminary examination, heard by a judge (which results in the filing of a criminal information in district court) or 2) by a grand jury convened by the district court (which results in the filing of a grand jury indictment). However, not all districts in New Mexico offer the option of grand jury indictment. Seven of New Mexico's thirteen judicial districts use grand jury indictments for at least some portion of the felony cases. The remaining six rely solely on the preliminary examination process. While either method may result in the case progressing to the district court (or not), there are important differences between them.

## Preliminary examinations versus grand jury indictments

Preliminary examinations are public proceedings with a number of features that are distinct from grand jury indictments. During preliminary examinations, the defendant is present and both the prosecutor and defense attorneys have an opportunity to present their sides. The defense attorney can cross-examine witnesses, and rules of evidence (with some exceptions) apply. If the judge determines that there is probable cause that a crime was committed and the defendant is the one responsible, the judge issues an order on preliminary examination. The prosecutor then files a criminal information in the district court. If no probable cause is found or the hearing does not occur for other reasons (e.g., time limits), the case is dismissed. If dismissed without prejudice, the prosecutor can refile the charges at a later date.

Unlike preliminary examinations, grand juries occur in private. Neither the defendant nor their defense counsel is present during witness testimony (though the defendant does have a right to testify at the grand jury hearing), and rules of evidence do not apply. The prosecutor presents evidence to show a crime was committed and that the defendant was responsible; however, the prosecutor is also required to provide information that may indicate the defendant is innocent (exculpatory evidence). The prosecutor must make all evidence available to the defense beforehand, and the defense may submit a request for exculpatory evidence. In New Mexico, the grand jury consists of twelve individuals, eight of whom must agree that there is probable cause in order for the case to be indicted.

The defendant, in consultation with their defense attorney, can also choose to waive their right to a scheduled preliminary examination (and by default, grand jury indictment), though this decision requires the consent of the prosecutor. Defendants may choose to waive this right if they feel it is more advantageous to their case in the long run or for other reasons. The defense attorney typically submits the waiver at the time the preliminary examination is scheduled to occur. If the prosecution agrees to the waiver, the judge in the lower court issues a bind over order, and the prosecutor files a criminal information noting a waiver of preliminary examination in district court. The case then proceeds in district court.

In addition to preliminary examination hearings and grand juries, cases can move to the district court via other paths as well. For instance, the judge may dismiss a case without prejudice, meaning that the prosecutor can refile charges at a later date. The prosecution can voluntarily file for a dismissal without prejudice at any time, including at the time of the preliminary examination. If the case is dismissed without prejudice, the case may be refiled and pursued via grand jury or some other means, such as filing a criminal information directly in district court, where a preliminary examination would occur in front of the district court judge instead of the lower court judge (N.M. R. Crim. P. Magist. Ct. 6-202). Further, cases that have been dismissed without prejudice after a preliminary examination is held can be brought before a grand jury later.

## Concerns about the use of grand jury indictments versus preliminary examinations

Legal scholars and others have raised concerns about the use of grand juries, leading some states to limit or abandon the practice altogether. Grand juries were intended to limit malicious prosecution and serve as a check on government officials by requiring community members to determine probable cause (Fairfax Jr. 2010). However, nearly all cases (over 90%) presented before a grand jury result in an indictment (Campbell 1973; Fairfax Jr. 2010; Gilboy 1984). This has led many legal scholars to decry the

use of grand juries, with one former New York Chief Judge, Sam Wachtler, famously stating that a grand jury would “indict a ham sandwich.” Thus, some view grand juries as a tool of the prosecution, rather than the check on prosecutors it was intended to be.

There are some benefits to using this closed grand jury system. One is that it may limit victim intimidation. In the grand jury system, victims are not subject to cross-examination, nor do they have to confront the defendant (Cassell and Goodwin 2012). This may be especially important for certain victims, such as those experiencing domestic violence.

Conversely, in preliminary examinations, witnesses are subject to cross-examination without a jury but with the defendant present. The defense attorney may engage in more aggressive cross-examinations, as they are not concerned with alienating jury members (Cassell and Goodwin 2012). This could also result in prosecutors offering a more favorable plea for the defendant in order to avoid retraumatizing the victim (Cassell and Good 2012). Further, some scholars have argued that, like grand juries, preliminary examinations also run the risk of becoming perfunctory (Sheldon, 2018).

Although there is an abundance of literature weighing the pros and cons of grand juries, we found very little research that systematically studies whether the ultimate outcomes of these criminal cases vary depending on case initiation type. One notable exception is a study by Gilboy (1984) who found that overall, there were few differences in case outcomes by case initiation type (preliminary examination versus grand jury). They did find that a subset of cases was less likely to result in conviction: those in which prosecutors secured a grand jury indictment after a judge failed to find probable cause at a preliminary examination. However, the study was limited to a single jurisdiction and focused only on murder cases.

### Controversy over use of grand jury versus preliminary examination in New Mexico

Prosecutors have used grand juries to initiate felony cases in New Mexico since the state’s inception, including in Bernalillo County, home to the 2<sup>nd</sup> Judicial District, the most populous district in the state. Prosecutors in the 2<sup>nd</sup> judicial district have utilized the grand jury system to initiate cases more often than preliminary examinations. For example, the 2<sup>nd</sup> judicial district court reported that 78% of cases in 2017 were initiated via grand jury (Barnitz, 2018). Some have criticized the use of grand juries in this district, however. In 2009, the National Center for State Courts reviewed felony case flow in the 2<sup>nd</sup> Judicial District due to above average time to disposition in that district. As a result of their assessment, they recommended that the district move toward using preliminary examinations more often (Steelman et al., 2009); this was noted again in a subsequent NCSC study (Griller, 2015). These reports explain that preliminary examinations are more cost- and time-effective. Since both the prosecutor and defense attend, the parties may agree to a plea bargain in cases with less serious charges allowing the case to be resolved in the lower court. In other cases, the preliminary hearing requires a determination of probable cause to pursue felony prosecution; those that do not meet that requirement would be dismissed (Steelman et al., 2009). Moreover, Griller (2015) noted that in other states, the use of grand juries is reserved for more serious and complicated cases.

Informed by this assessment, the 2<sup>nd</sup> Judicial District Court urged the District Attorney (DA) to move away from the use of grand jury indictments. To further bolster their position, the 2<sup>nd</sup> Judicial District Court reported that most cases initiated by grand jury did not result in a conviction (see Dinelli, 2019).



As administrators of grand juries, the district court is responsible for scheduling. Beginning in early 2019, the Bernalillo District Court decreased the number of grand juries impaneled each month. By impaneling fewer grand juries every month, Bernalillo County expected to see an increase in case initiation through preliminary examinations. However, the Bernalillo County District Attorney and others opposed this action.

One concern is that preliminary examinations are scheduled on trailing dockets, requiring all witnesses, including officers, to be at court until the case is heard (Barnitz, 2018). These cases sometimes have to be rescheduled, wasting valuable time and resources. Torrez (2018) pointed to data which indicated that over half of scheduled preliminary examinations never occurred, most frequently because the defendant failed to appear. Thus, while there are expected cost-savings by using preliminary examinations rather than grand juries, when a preliminary examination is postponed, other criminal justice agents may incur costs unnecessarily by appearing at court. Although witnesses may fail to attend a grand jury hearing requiring it to be rescheduled, this may occur less often than at preliminary examinations. Further, grand juries are scheduled at a specific time rather than on a trailing docket so witnesses, officers, the prosecuting attorney, and any others central to the case do not have to wait until the case is called. Therefore, relying primarily on preliminary examinations in large, urban jurisdictions is not cost effective (Torrez, 2018).

A second concern is that prosecutors will initiate fewer felony cases in district court if the preliminary examination is the primary method (Torrez, 2018). In part, this may be because witnesses are less likely to attend the preliminary examination, resulting in dismissed cases. This may also be because grand jury indictments are typically easier to secure than findings of probable cause via preliminary examinations. Torrez argues that fewer felony case initiations will cause an increase in crime rates.

Finally, it is the prosecutor's choice to decide which method to use according to both the New Mexico Constitution and state law. Therefore, the court's decision to limit the use of grand jury undermines this discretion (Torrez, 2018).

## COVID-19

COVID-19 changed the operation of the criminal justice system. In New Mexico, the governor announced a statewide stay-at-home order on March 23, 2020. The courts in the 2<sup>nd</sup> Judicial District, located in Bernalillo County where the number of COVID-19 cases was highest in the state, responded by finding ways to minimize contact, including suspending juries. Thus, the only way cases could progress to district court during this period was via a preliminary examination. While other districts within the state had limited operations, some continued to operate with juries. It is unknown, however, whether the use of preliminary examinations increased across the state during this time.

## Current study: Addressing gaps in knowledge about case initiation type

The debates about case initiation type that have occurred in the 2<sup>nd</sup> Judicial District are similar to those that have occurred nationally and historically. These debates raise important questions about the use of grand juries versus preliminary examinations, such as which method prosecutors use to initiate cases most often, for which types of cases, and whether outcomes differ by case initiation type. In New Mexico, very little is known about the use or effectiveness of grand juries versus preliminary examinations across the state. Further, while some data are available for the 2<sup>nd</sup> Judicial District, it is

limited. For instance, it is unknown how many times preliminary examinations are rescheduled, how frequently cases are rescheduled for reasons other than the failure of the defendant to appear (e.g., prosecutor or defense not ready), and whether rescheduling is related to determination of probable cause. It is important to understand whether and how the case initiation decision influences the progression of cases, and how this may vary by offense type, jurisdiction, and other key factors. The current study aims to fill some of these gaps.

Using a sample of cases initiated in the lower courts between 2017 and 2020, we explore the progression of felony cases from case initiation to disposition. Specifically, we explore the following questions:

1. In what ways does case initiation type influence felony case processing?
  - a. How do felony cases move through the courts?
  - b. Is case initiation type related to case outcomes?
  - c. Why are cases dismissed?
  - d. Are case dismissals related to case initiation type?
2. How does failure to complete a preliminary examination influence felony case processing?
  - a. How often are preliminary examinations rescheduled and why?
  - b. Is there a relationship between rescheduled preliminary examinations and the progression of felony cases?
  - c. Is there a relationship between rescheduled preliminary examinations and case outcomes?

We examine whether there are differences by offense type, jurisdiction, and the onset of COVID-19-related restrictions.

## Methods

The data for this study originates from the New Mexico's Administrative Office of the Courts (AOC). We used "automated data" from the AOC to first identify all felony cases from metropolitan and magistrate court cases disposed between 1/1/2017 and 12/31/2020. This dataset includes all misdemeanor and felony cases filed in the lower courts. We selected those that had a case type of "felony" in the description as well as those with court case numbers that indicate felony charges.<sup>1</sup> Next, we selected a random sample of 50 cases to test our data collection procedures. Once we tested and refined the procedures, we selected an additional random sample of 360 cases. We stratified the sample by county to ensure representation from all counties. The dataset includes basic information about the case (charges, dates, disposition, county, and judicial district) and the defendant (demographics). We matched the lower court felony cases to the corresponding district court case using an automated dataset of all district court cases disposed between 1/1/2017 and 12/31/2021.

To supplement the automated data, we gathered information from online court records (Odyssey) using secured access. From the lower court case, we recorded whether and how many times a preliminary examination was postponed, along with the reasons for postponement. Additionally, when the case was dismissed (in either the lower courts or district court), we recorded the reasons for dismissals as documented in the documentation or court registry notes if the documents were not available. In cases dismissed without prejudice, we recorded whether the prosecutor later pursued the charges. For cases

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<sup>1</sup> For instance, cases that have "MR" in the court case number have only misdemeanor charges and those with "FR" include one or more felony charges.

bound over to the district court, we recorded case initiation type (grand jury or preliminary examination); for cases initiated via a preliminary examination, we recorded whether a judge heard the proceedings or if the proceedings were waived. Finally, since some cases initiated and disposed in the lower courts were not yet disposed in the district court, we identified those cases and recorded the outcome or pending status of those cases, whichever was applicable.

We recorded the outcomes of each case. When exploring outcomes, we tracked the outcome of the case overall, not individual charges. Cases could be dismissed with or without prejudice. If dismissed with prejudice, the case cannot be refiled; if dismissed without prejudice, the prosecutor can refile charges. If refiled, we noted that. Some felony cases are tried or pled in the lower court; this occurs when the prosecutor reduces the charges to misdemeanors or drops the felony charges in the case. In these instances, the prosecutor would not file the case in district court. We recorded other dispositions, such as pre-prosecutorial diversion, acquittals, pleas, and jury-trial convictions.

Besides these data, we recorded whether the judicial district uses grand juries. Using all data available to us, we identified dispositions from the magistrate and metropolitan court related to grand jury indictments between 2016 and 2021 and determined the judicial districts associated with those cases. We verified that we had identified the correct districts with court officials. Seven districts used grand juries, but one district did so only when the district attorney requested it, which was not frequent.

Finally, court procedures and outcomes may vary by jurisdiction. Besides classifying the county by judicial district, this study classifies judicial districts as urban only, rural only, or mixed based on the National Center for Health Statistics' 2013 Urban-Rural Classification Scheme for Counties. Information about key variable definitions is available in Appendix A and maps are available in Appendix B.

The analyses are descriptive in nature. When appropriate, we assessed the data for statistically significant differences. We used Pearson's chi-square test to examine significance and report the associated p-values. This test is used for categorical variables and measures whether there is a relationship between the variables being tested. The lower the p-value, the more confident one can be that the observed difference is not due to chance. We use a threshold of .05 and consider anything at or below that level statistically significant. Statistically significant findings are noted at the bottom of the figures/tables; when statistically significant, we note the calculated p-value of .05, .01 or .001, whichever is appropriate. When the overall finding is that there is no statistically significant relationship between the variables, this is noted as "n/s." When there is a statistically significant relationship overall, additional significance testing is completed within categories (for example, within each case initiation type). These differences are reported only at the .05 level. When all categories differ, we do not include any additional explanation. In some cases, there are no differences between specific categories even though there is a significant relationship overall. We note when this occurs.

Importantly, statistical significance relies on the size of the sample—the larger the sample, the more likely it is that one will find a statistically significant relationship. This concept is referred to as "statistical power." In large samples, the statistically significant differences may not be substantive; in other words, the differences are not meaningful. In smaller samples, like the one here, statistical significance is more difficult to achieve, but the differences found may be substantive. We discuss both statistical and substantively significant differences.

## Results

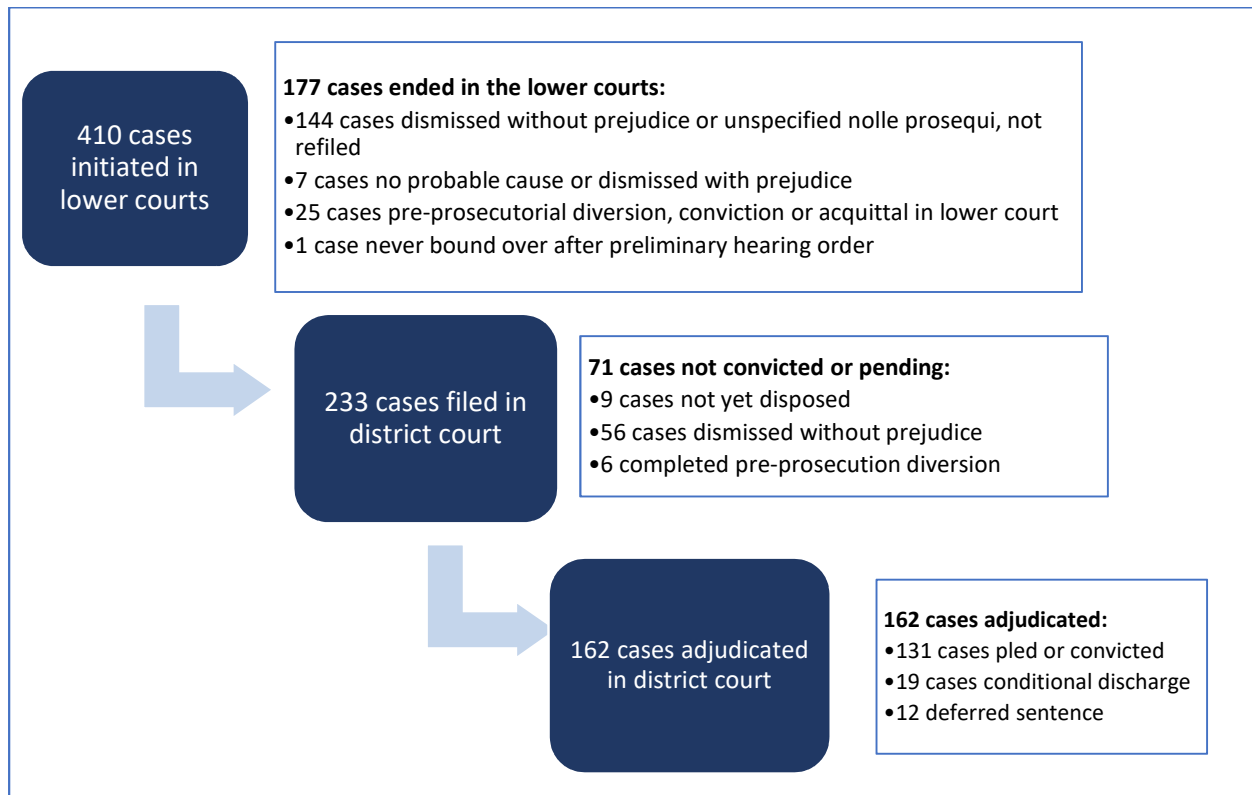
The results section includes two main parts. Part 1, “Case flow and outcomes,” begins with an overview of the movement of felony cases in our study. Next, it explores how dispositions in the lower court may differ depending on whether the lower court held a preliminary examination hearing in the case. The section then examines the disposition of cases in the district court by case initiation type and other characteristics.

Part 2, “Preliminary examinations,” begins by exploring how frequently preliminary examinations are rescheduled, the number of times they are rescheduled, and documented reasons for rescheduling. The section then illustrates the progression of cases by whether the preliminary examination failed to occur; it also examines whether case initiation type and case outcomes are associated with rescheduled hearings. Finally, the section assesses whether there are case characteristics or other factors that are associated with failed preliminary examinations.

### Part 1: Case flow and outcomes

The 410 cases in this sample were initially filed in lower court (magistrate or metropolitan court) after an arrest was made at the time of the incident (n=283) or after a judge issued a warrant for arrest (n=127). While the majority of cases progressed to district court, many did not progress to district court and instead, ended in the lower court. Similarly, while many of the district court cases were adjudicated, others dropped out during this phase. Figure 1 provides an overview of the progression of the cases in this sample.

Figure 1. Overview of felony case flow.



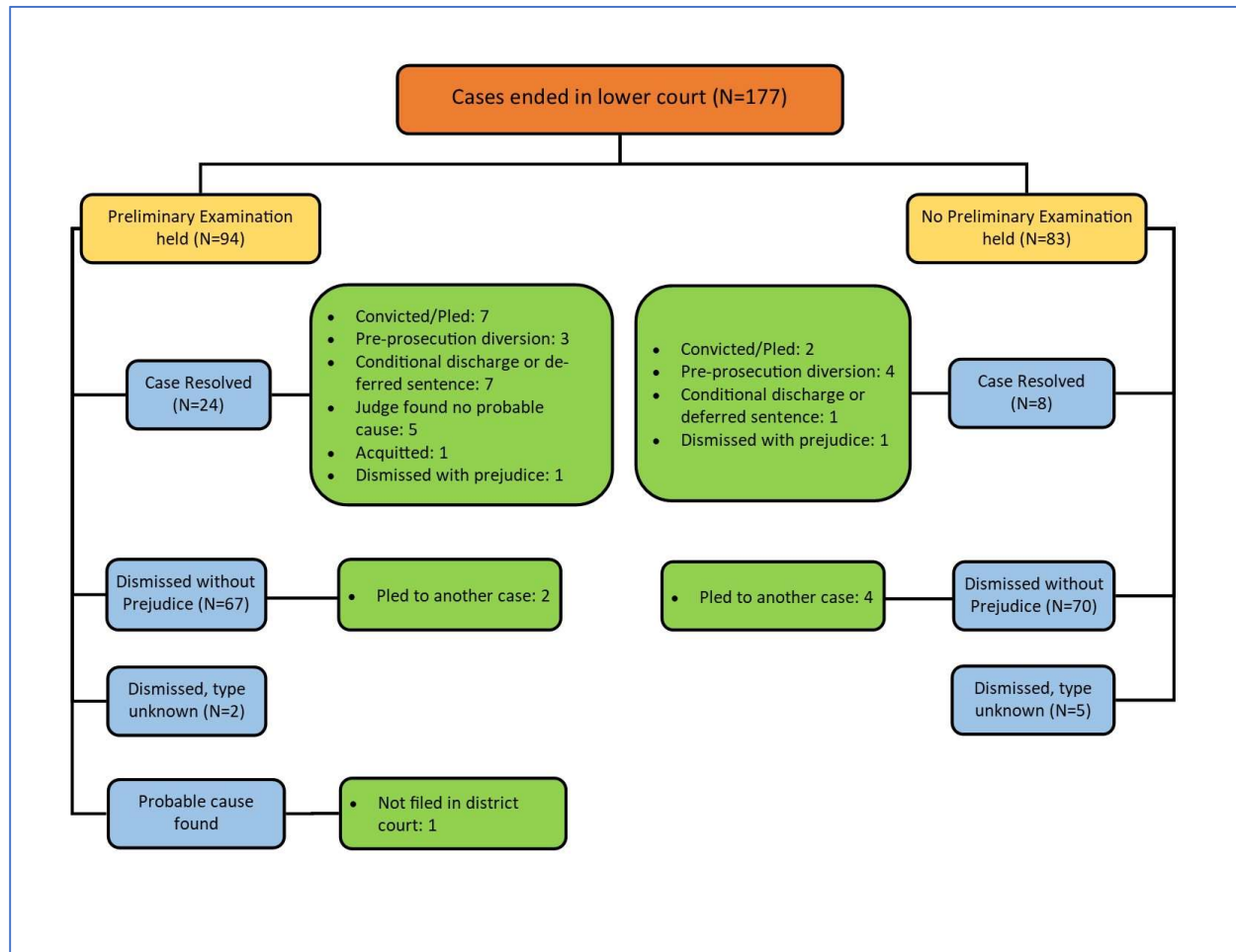
Among the 410 felony cases filed in magistrate or metropolitan court, 43% (N=177) ended in the lower court/did not proceed to district court. The prosecutor dismissed the vast majority (N = 144, 81%) of cases that ended in the lower court without prejudice/ filed a nolle prosequi; these cases had not been refiled at the time we completed data collection. This means that neither felony nor misdemeanor charges had been subsequently pursued at the time of data collection. Among the remaining cases that ended in the lower courts, 25 (14%) were resolved through pre-prosecution diversion, conviction, or acquittal on misdemeanor charges. The judge or prosecutor dismissed seven cases (4%). In five of these, the judge found no probable cause. The prosecutor filed for dismissal with prejudice in the other two cases, indicating charges cannot be refiled. Finally, in one case, the judge found probable cause at the preliminary examination, but the prosecutor never filed the criminal information in district court.

The prosecutor filed 233 cases in district court. Nine of the 233 cases (4%) ultimately bound over to district court were pending disposition at the time data collection ended; the remaining 224 (96%) cases were disposed in district court. Of the 224 cases disposed, the prosecutor or judge dismissed 56 cases (25%) without prejudice, indicating the prosecutor could refile the charges but had not done so at the time of data collection. The prosecutor diverted the defendant from prosecution in six cases (3%). The remaining 162 cases (72%) that were bound over to district court and disposed were adjudicated, resulting in a conviction, conditional discharge, or deferred sentence. Specifically, 131 defendants either pled guilty (N=130) or were found guilty at trial (N=1). Another 19 cases resulted in a conditional discharge and 12 in a deferred sentence.

## Disposition of cases that ended in the lower court

A substantial number of cases ended in the lower court (N=177, 43%). A magistrate or metropolitan court judge held a preliminary examination in over half (n=94, 53%) of these cases; the remaining cases ended without a preliminary examination.<sup>2</sup> Figure 2 illustrates the disposition of cases that ended in the lower court by whether a preliminary examination occurred.

Figure 2. Disposition of cases ended in lower court.



As might be expected, a greater proportion of cases in which a preliminary examination was held were resolved in the lower court (n=24, 26%) compared to those in which a preliminary examination was not held (n=8, 10%). Among the 24 cases resolved after a preliminary examination, 15 resulted in some sanction. In seven cases, either the court convicted the defendant or the defendant pled guilty to misdemeanor charges. In another seven cases, the judge ordered a conditional discharge or deferred sentence; and the prosecutor diverted three defendants. Among the remaining seven cases, the judge acquitted one defendant, found no probable cause in another five cases, and in one case, the prosecutor

<sup>2</sup> Recall that if the preliminary examination is waived, the case proceeds directly to district court. Thus, “held” here indicates that a lower court judge heard the case and made a decision about probable cause.

dismissed the case with prejudice, which means that the prosecutor would not be able to refile the charges in the future.

Among the eight cases that were resolved without a preliminary examination, three defendants pled to misdemeanor charges, one of whom received a conditional discharge or deferred sentence. Another four defendants agreed to a pre-prosecution diversion program and the court dismissed one case with prejudice.

Of the remaining cases that ended in the lower court, the lower judge dismissed 137 without prejudice, 67 (49%) involving a held preliminary examination and 70 (51%) that did not. While the prosecutor could refile charges in the future (either felony or misdemeanor), they had not done so at the time data collection was completed. The judge dismissed nearly three-quarters (72%, n=67) of the cases that proceeded to a preliminary examination without prejudice; in two of these cases, the defendant pled guilty to another, concurrent case.

Judges dismissed a greater proportion (84%, n=70) of cases that did not proceed to a preliminary examination without prejudice compared to those that did proceed to a preliminary examination. Of these, four defendants pled guilty to charges in another case.

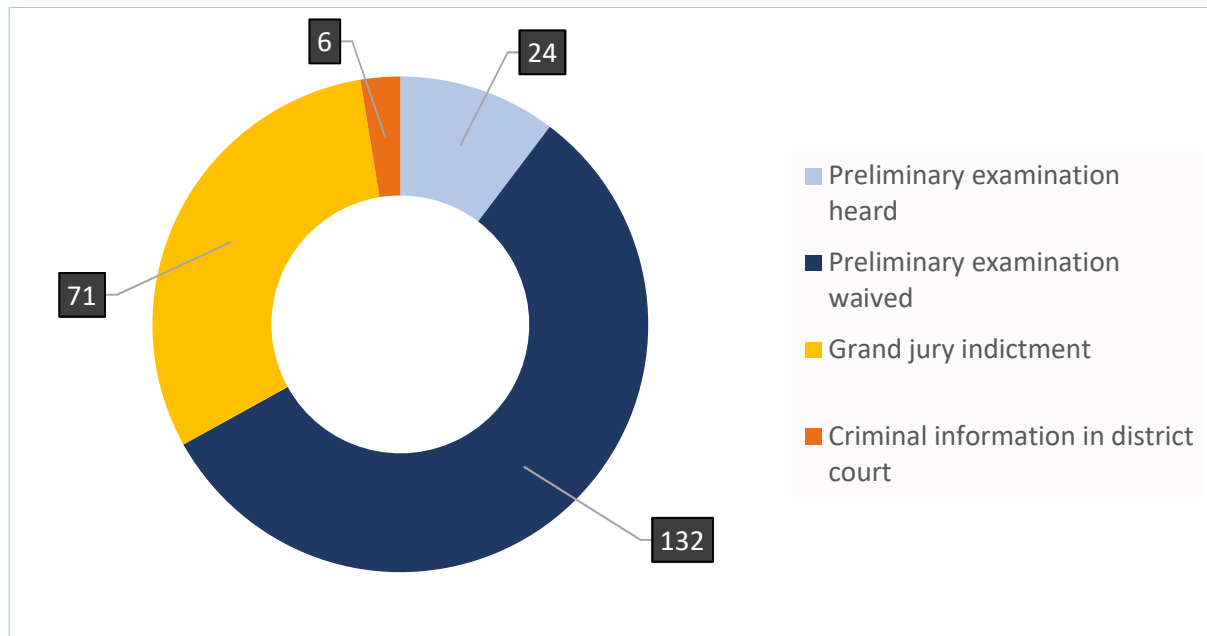
The court dismissed seven cases, but the documentation did not indicate whether this was with or without prejudice. Two of these were dismissed after the court held a preliminary examination, and the remaining five were dismissed before a preliminary examination was held.

Finally, in one case, the judge found probable cause after completing the preliminary examination. The court issued an order on preliminary examination for a bind over to district court, but the prosecutor never filed the case in district court.

### Case initiation in district court

Prosecutors filed charges in district court for felony prosecution in 233 cases. A key question this study seeks to answer is how these cases moved to district court. As explained in the introduction, prosecutors initiate a case in district court after a finding of probable cause in the lower court (“preliminary examination heard”, a true bill from the grand jury (“grand jury indictment”), a waiver of both after a preliminary examination is scheduled and called (“preliminary examination waived”), or rarely, may directly file an information directly in district court (“criminal information in district court”). When filed directly in district court, a district court judge hears the preliminary examination to determine probable cause. Figure 3 illustrates how cases were initiated in district court.

Figure 3. Method of case initiation in district court.



N=233

Defendants waived their right to a preliminary hearing in over half of the cases (57%, N=132) prosecutors filed in district court. A grand jury indicted nearly one-third of the cases (30%, n=71); 22 of these were indicted after a magistrate or metropolitan court judge dismissed the case without prejudice in the lower court. In 10% (n=24) of cases, a lower court judge found probable cause at the preliminary examination. In the remaining 3% (n=6), the prosecutor filed a criminal information in the district court without having secured an indictment, order on preliminary examination or waiver of preliminary examination in the lower courts. One of these was a fugitive case that the lower court transferred without a preliminary examination or grand jury indictment. In remaining five cases, the lower court judge presided over a preliminary examination and dismissed the case without prejudice.

#### *Characteristics associated with case initiation type*

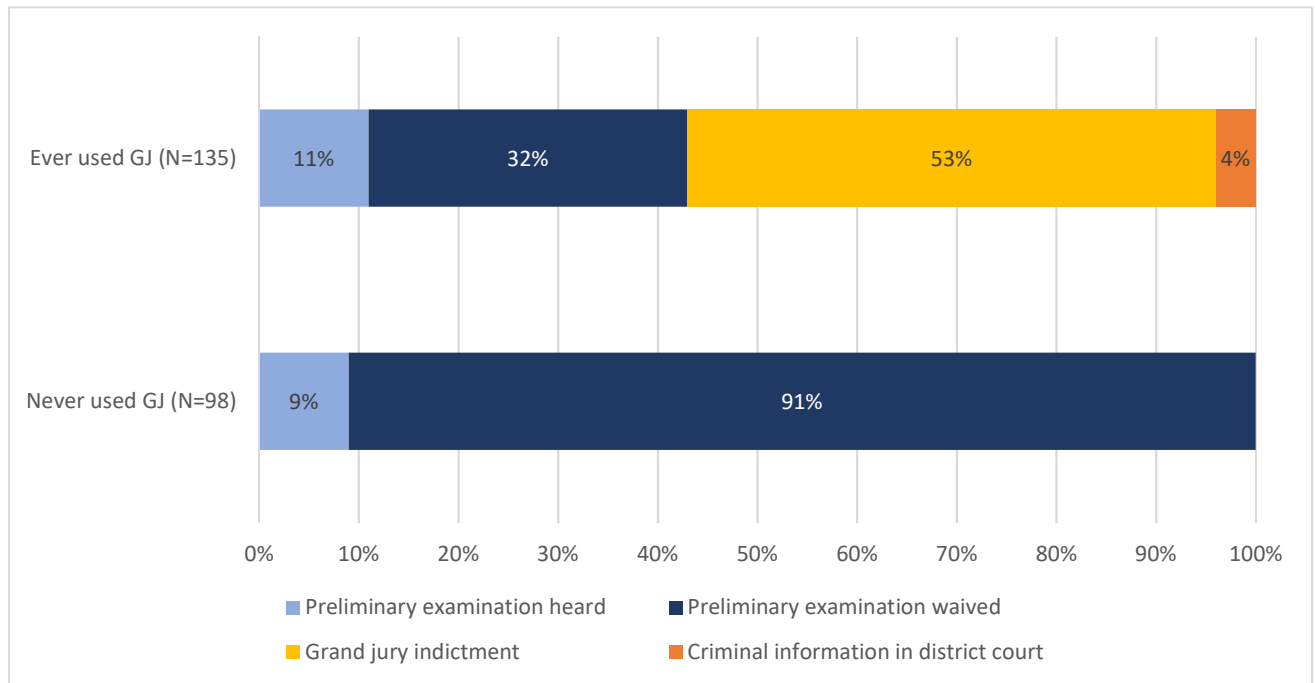
Case initiation type may vary depending on the district and characteristics of the case. Some districts rely primarily or exclusively on preliminary examinations, while other districts offer grand juries. One may expect that case initiation type would vary by whether grand juries are an option. Besides the availability of grand juries in a district, case initiation type may vary by location characteristics, case characteristics or the onset of COVID-19 restrictions. This section explores whether these variables are associated with case initiation type.

#### *Case initiation type and use of grand jury in district*

Figure 4 explores case initiation type by a district's use of grand jury. Districts that initiated any cases via grand jury indictment (GJ) between 2016 and 2021 are labeled as "ever used GJ"; those that did not are labeled "never used GJ."



Figure 4. Case initiation method by district use of grand jury (GJ).



N=233;  $P < .001$  overall; n/s difference for preliminary hearing heard

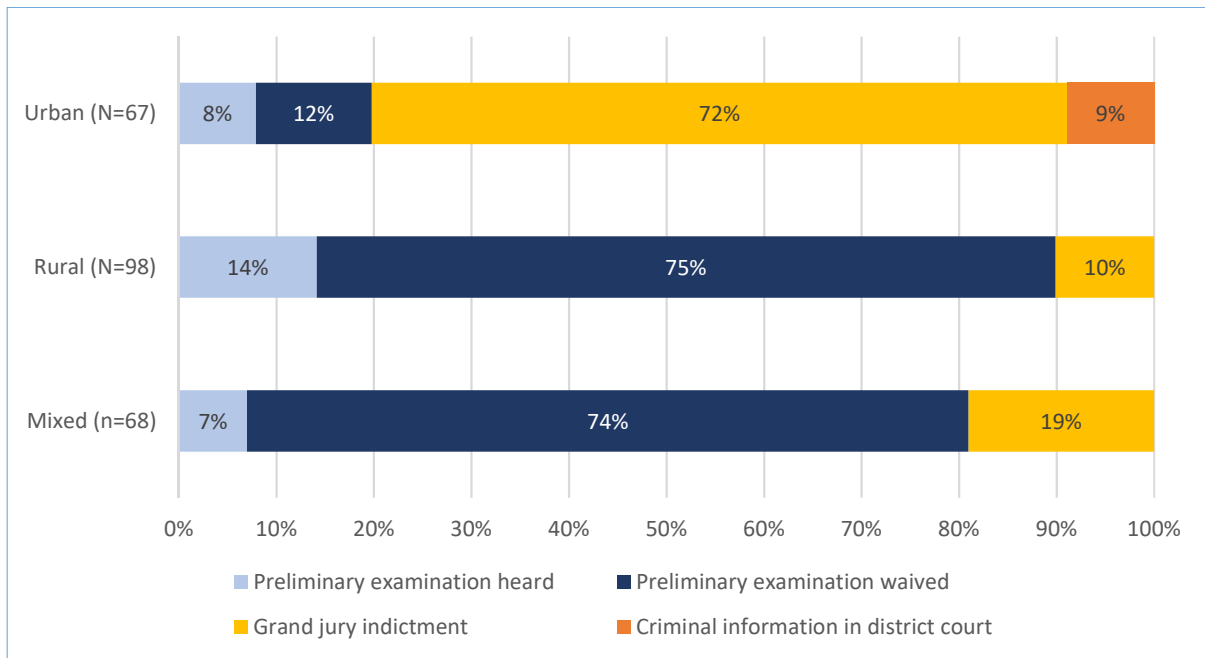
As can be seen in Figure 4, in districts where grand juries are not used, prosecutors filed cases in district court after a waiver of the preliminary examination much more often than in districts where grand juries were used (91% vs. 32%, respectively). The proportion of cases bound over after the lower court judge heard the preliminary examination proceedings was about the same regardless of whether the district used grand juries (11% vs. 9%). In a small percentage of cases (4%), the prosecutor filed a criminal information directly in district court, bypassing both the preliminary examination process in the lower court and grand jury indictment. Notably, this happened only in one district that uses grand juries. While the overall chi-square value was statistically significant ( $p < .001$ ) indicating that there is a relationship between the case initiation type and use of grand jury, comparisons by case initiation type reveal no statistically significant differences by whether a preliminary examination was heard. All other case initiation types were significantly different. Overall, then, these data indicate that regardless of whether districts have a grand jury option, cases are equally likely to progress to district court after a finding of probable cause by a lower court judge.

#### Case initiation type and location

Geography is strongly associated with case initiation type. This section examined location in two ways: first, we analyzed initiation by level of urbanization; second, we analyzed the data by region. While region is correlated with urban/rural designation, the relationship is not a perfect one.

Figure 5 explores the relationship between case initiation type and whether the district is urban, rural or is comprised of both urban and rural (mixed) counties.

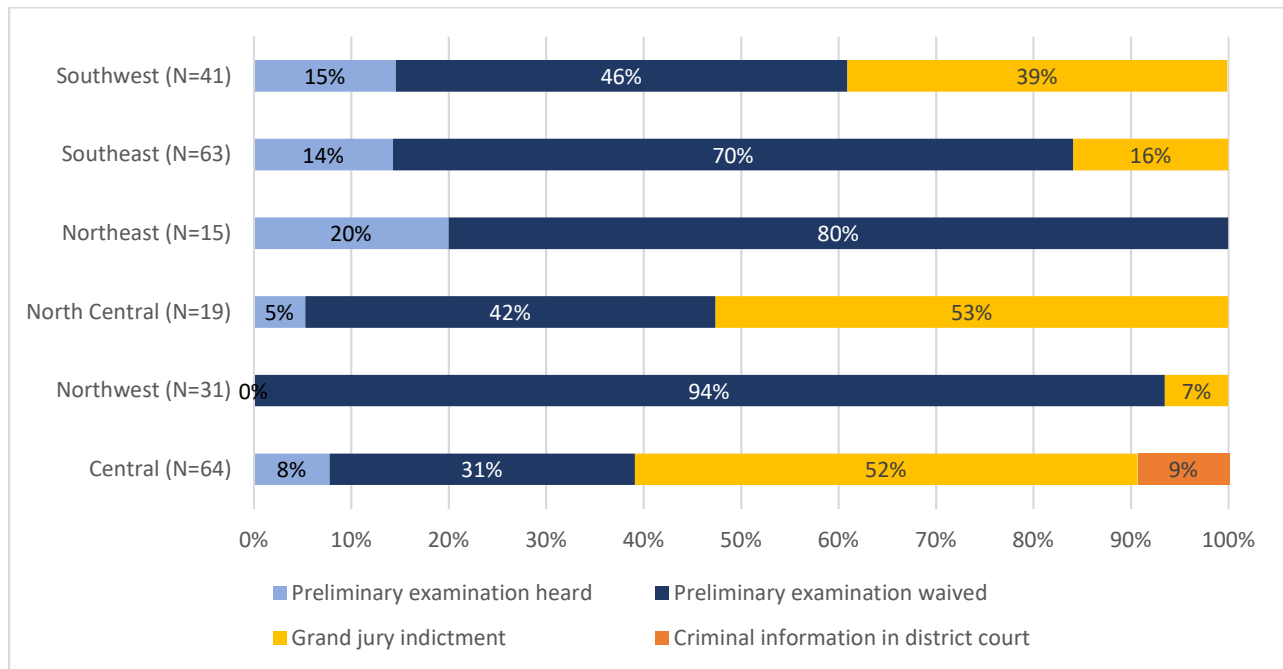
Figure 5. Case initiation type in urban, rural, or mixed district.



N=233;  $p < .001$  overall; preliminary hearing held n/s

In districts comprised of only urban counties, the vast majority of cases (72%) were bound over to district court as a result of a grand jury indictment; this is significantly higher ( $p < .05$ ) than in districts defined as purely rural (10%) or those that are mixed (19%). Cases are slightly more likely to move to district court after a finding of probable cause by a lower court judge (“preliminary examination heard”) in rural districts (14%) relative to urban districts (8%) or mixed districts (7%); these differences, however, are not statistically significant. Further, no statistically significant differences were found for case initiation type between rural and mixed areas, only urban compared to the other areas. Figure 6 illustrates the relationship between case initiation type and region of the state.

Figure 6. Case initiation by region of the state.



N=233;  $P < .001$  overall; n/s differences for preliminary hearing held or criminal information in district court

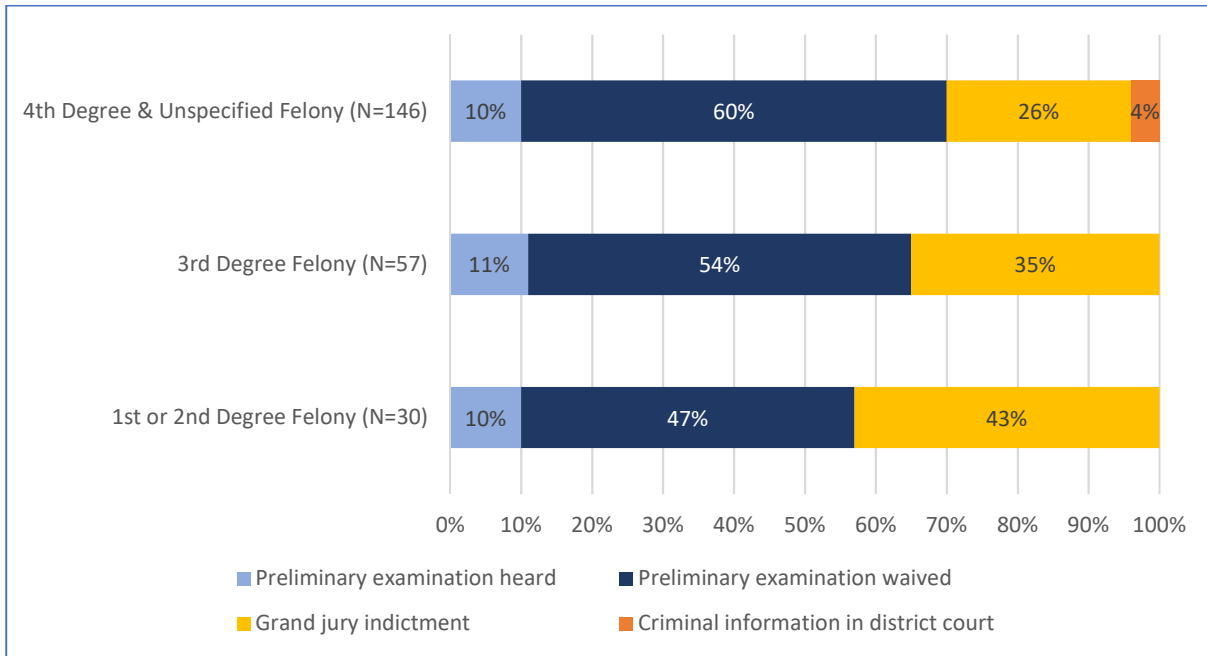
There were some statistically significant differences in case initiation type by region; specifically, case initiation by grand jury and waived preliminary hearing significantly varies across region ( $p < .05$ ). Notably, none of the cases in the northeast region moved to district court by a grand jury indictment. In the northwest region, none of the cases moved to district court as a result of a probable cause determination by a lower court judge though this difference was not statistically significant. In both of these regions, the most common way cases moved to district court was through a waiver of the preliminary examination (80% and 94%, respectively). Just over half of the cases in the north central and central areas of the state were initiated by a grand jury indictment; these were almost entirely concentrated in the 1<sup>st</sup> and 2<sup>nd</sup> judicial districts.

#### Case initiation type and offense characteristics

The type of case may be related to how the case is initiated in district court. The extant literature suggests that prosecutors select cases with the most serious charges for grand jury indictment. Figures 7 and 8 explore whether that holds true for this sample of cases. Figure 7 displays the degree of the most serious offense. Figure 8 describes the type of offense that reflects the most serious degree in the case. Offenses include violent, property, drug, and driving while intoxicated (DWI), followed by all “other” charges.

Figure 7 illustrates case initiation type by degree of the most serious offense.

Figure 7. Case initiation type by degree of most serious charge in case.

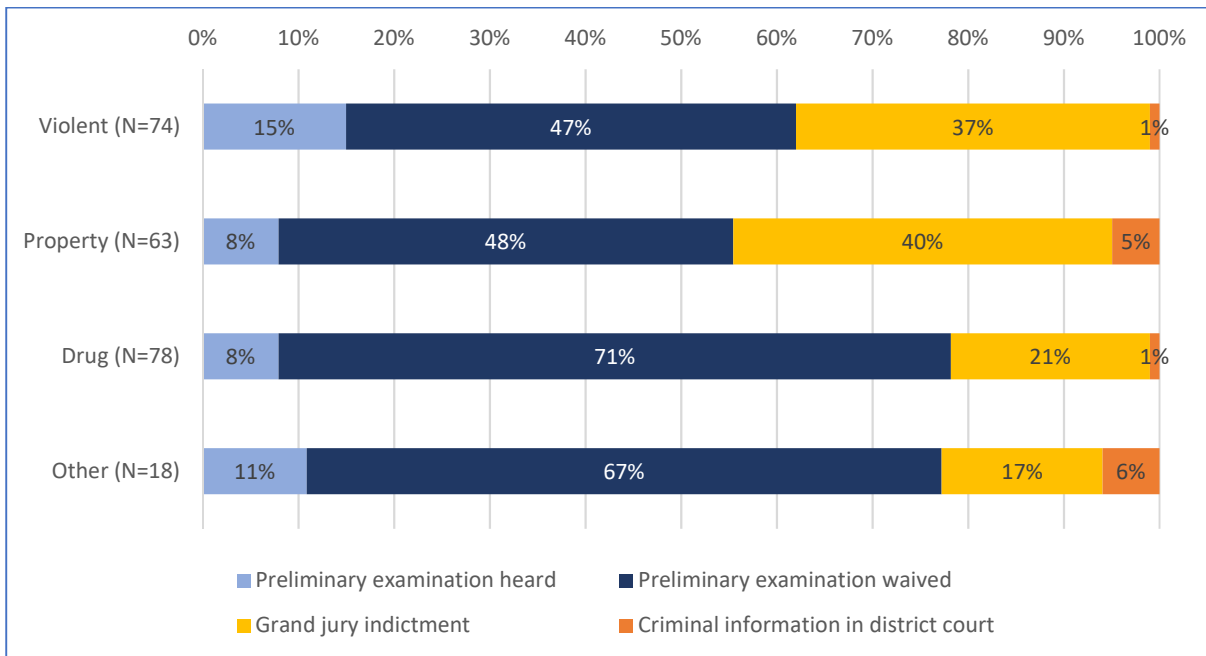


N=233, n/s

There were some notable differences in type of case initiation by offense severity although these were not statistically significant at the  $p < .05$  level. Specifically, there is a positive relationship between offense severity and use of grand jury. Regardless of offense severity, the proportion of cases initiated via a preliminary examination is about the same. Further, prosecutors only filed cases with a 4th degree felony or felony of unspecified degree directly in district court (4% of cases); they did not do so for cases involving felonies with 3<sup>rd</sup> degree or higher.

Figure 8 illustrates the type of case initiation by the most serious offense type in the case.

Figure 8. Case initiation by most serious offense in case.



N=233, n/s

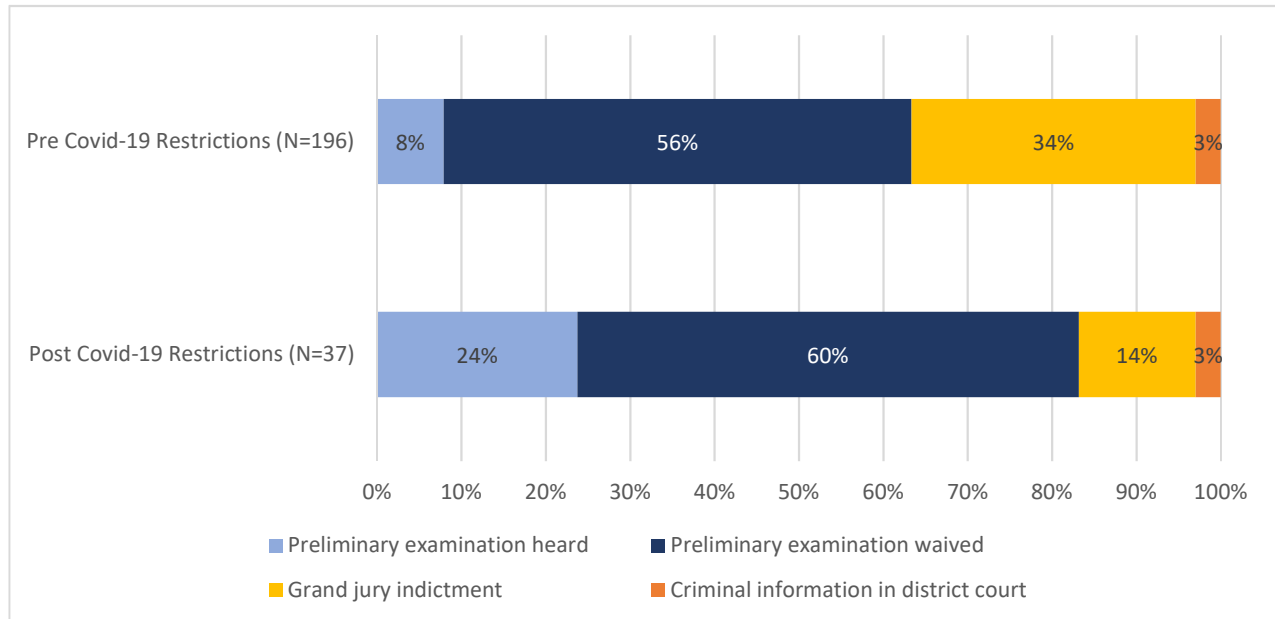
While case initiation type varied somewhat by the most serious offense in the case, the differences were not significant at the .05 level. Despite this, it is notable that prosecutors were slightly more likely to initiate cases with violent or property offenses by grand jury indictment (37% and 40%, respectively) compared to cases involving a drug (21%) or other offense (17%). Conversely, in cases in which the most serious offense involved drug or “other” charges, the most common initiation type was a waiver of preliminary examination (71% and 67%, respectively). Prosecutors initiated a slightly greater proportion of cases with violent or “other” charges after a lower court judge determined there was probable cause at a preliminary examination (15% and 11%, respectively) compared to those with property or drug charges (8%). Finally, prosecutors were slightly more likely to initiate cases involving property or other offenses directly in district court via a criminal information (5% and 6%, respectively) for a preliminary examination in district court than cases with violent or drug charges as the most serious offense (1%). Overall, then, prosecutors used preliminary examinations most often for violent offenses, waivers of preliminary examinations for drug and other offenses, and grand jury indictments for violent and property offenses.

The tables in Appendix C.2 further divide these data by whether the district has used a grand jury over a five-year period. In districts where grand juries are used, the most serious cases (2<sup>nd</sup> degree or higher) and those involving violent and property offenses were more likely to be initiated via grand jury. In areas without a grand jury, the most serious cases (2<sup>nd</sup> degree or higher) and those involving violent or property offenses were initiated via held preliminary examinations. Together, although not statistically significant, these results suggest that prosecutors initiate cases with more serious offenses via grand jury when available or through a preliminary examination heard by a judge when grand jury is not available.

### Case initiation type and COVID-19 restrictions

As expected, there were significant differences in case initiation type by whether COVID-19 restrictions were in place (see Figure 9).

Figure 9. Case initiation type before and after COVID-19 restrictions.



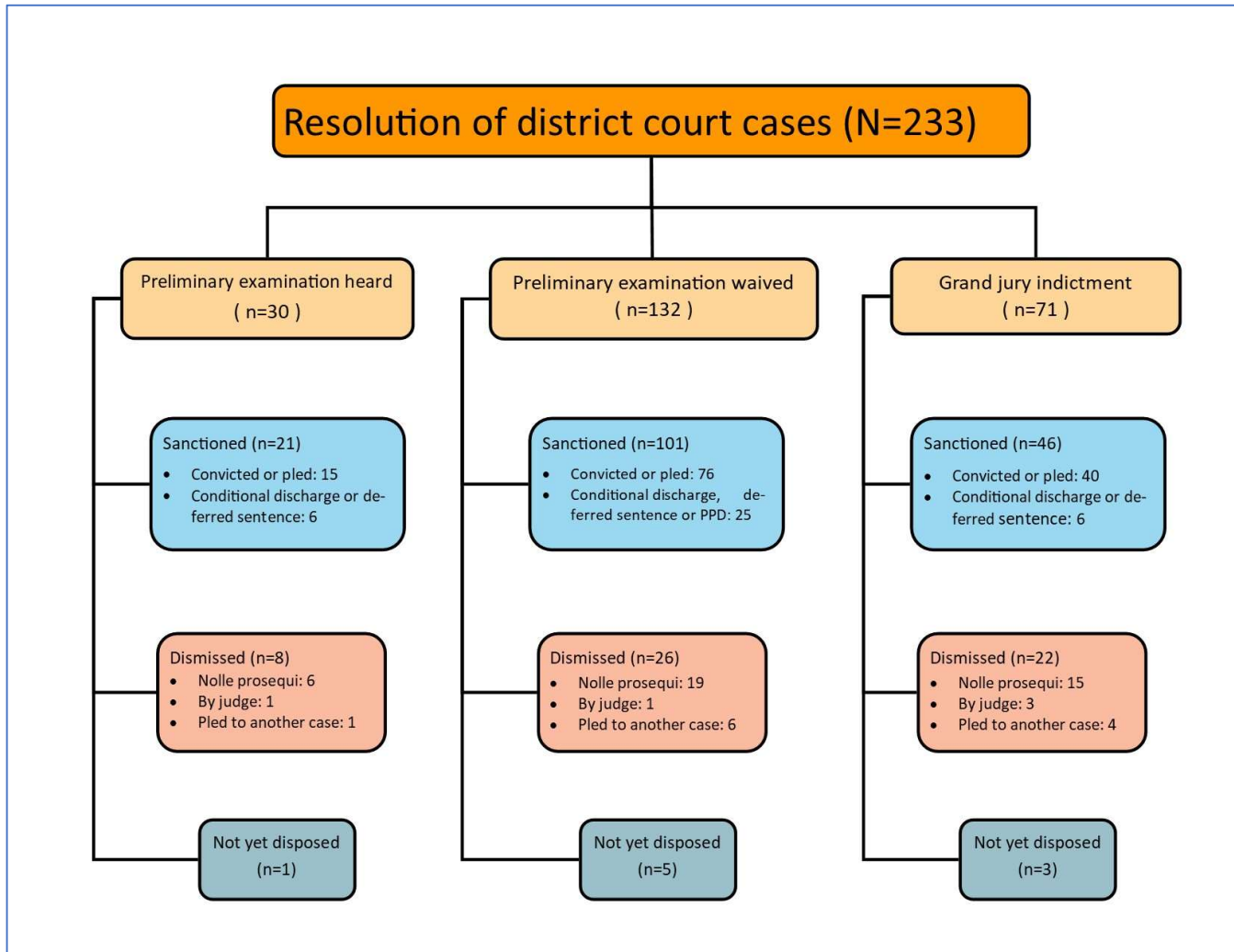
N=233; overall  $p < .01$ ; preliminary hearing waived and criminal information in district court n/s

Prior to the restrictions, 34% (N=67) of cases were initiated by grand jury indictment. This fell to just 14% (n=5) during the restrictions. This difference was statistically significant at the .05 level. Waivers of preliminary examinations increased slightly after the implementation of the restrictions, from 56% to 60%; this difference was not statistically significant. The proportion of preliminary examinations heard, however, tripled after the implementation of COVID-19 restrictions from 8% to 24%; this was significant at the .05 level. There were no differences in the proportion of cases initiated in district court by criminal information for a later preliminary examination hearing.

### Disposition of cases in district court

The prosecutor initiated 233 cases in district court. Figure 10 illustrates the outcomes of cases by case initiation type. Cases initiated by criminal information in district court via a preliminary examination (n=6) are included in the “preliminary examination heard” category in this figure.

Figure 10. Disposition of cases in district court.



Most of the 233 district court cases were resolved by the end of the study; just nine were not. Among the cases that were resolved in district court by the end of the study (N=224), there were few differences found in case outcomes by case initiation type, and none were statistically significant.

Two-thirds of cases overall resulted in some sort of sanction, and most of those due to a conviction through a plea or jury trial, regardless of the method used to initiate the case. A greater proportion of cases initiated either through a preliminary examination heard by a judge (72%, n=21) or waiver of preliminary examination (79%, n=101) resulted in a sanction than those initiated by grand jury (68%, n=46). Further, a greater proportion of cases initiated by a heard preliminary examination or waived hearing were resolved via a conditional discharge, deferred sentence, or pre-prosecution diversion (PPD) (21%, n=6 and 20%, n=25, respectively), compared those initiated by a grand jury (9%, n=6).

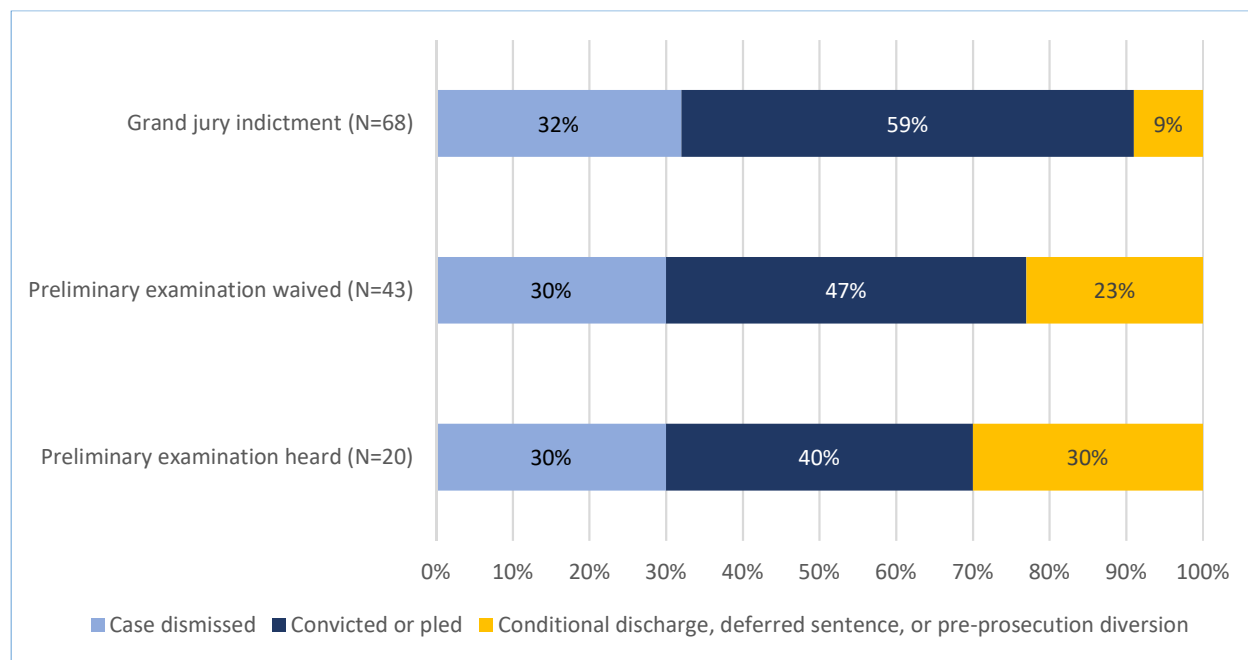
Although there were no meaningful differences in the proportion of cases dismissed, a smaller proportion of cases initiated by waiver of preliminary examination were dismissed, compared to those initiated after a judge heard the preliminary examination or after a grand jury indictment. Cases could be dismissed by the prosecutor (nolle prosequi or dismissed because they pled to another case as part

of a plea bargain) or dismissed by the judge without prejudice. Specifically, as illustrated above, eight cases (28%) opened after a heard preliminary examination were dismissed by the prosecutor through the filing of a nolle prosequi (n=6) or because of a plea bargain (n=1); a judge dismissed one case. Twenty-six cases (21%) initiated by a waiver of preliminary examination were ultimately dismissed. Most of these were dismissed by the prosecutor (n=25), but six of those cases were because the defendant pled to another case; the judge dismissed one additional case. Among cases initiated by grand jury, 22 (32%) were dismissed, most (n=19) by the prosecutor. Of those, the prosecutor moved to dismiss four cases because the defendant pled to charges in another case. The judge dismissed three cases.

#### Case outcomes among only districts that use a grand jury

One of the key questions this study addresses is whether outcomes vary depending on case initiation type. We found few differences when examining all cases in district court, as explained in the prior section. Figure 11 limits the data to districts that used a grand jury at least once over a five-year period.

Figure 11. District court case outcome by case initiation type *in districts that use grand juries*.



N=131, n/s

There is virtually no difference in the rate of dismissals by case initiation type when limiting the data to districts that used a grand jury either substantively or statistically. There were some differences regarding whether the case was convicted/pled versus conditional discharge or deferred sentence. A greater proportion of cases (59%) initiated by grand jury resulted in a plea or conviction at trial, compared to cases initiated by a waiver of preliminary examination (47%) or a heard preliminary examination (40%). Just 9% of cases initiated by grand jury indictment resulted in a conditional discharge, deferred sentence or pre-prosecution diversion compared to 23% of those initiated by a waived preliminary examination and 30% of those initiated after a preliminary examination was heard. While not statistically significant, these differences are notable.



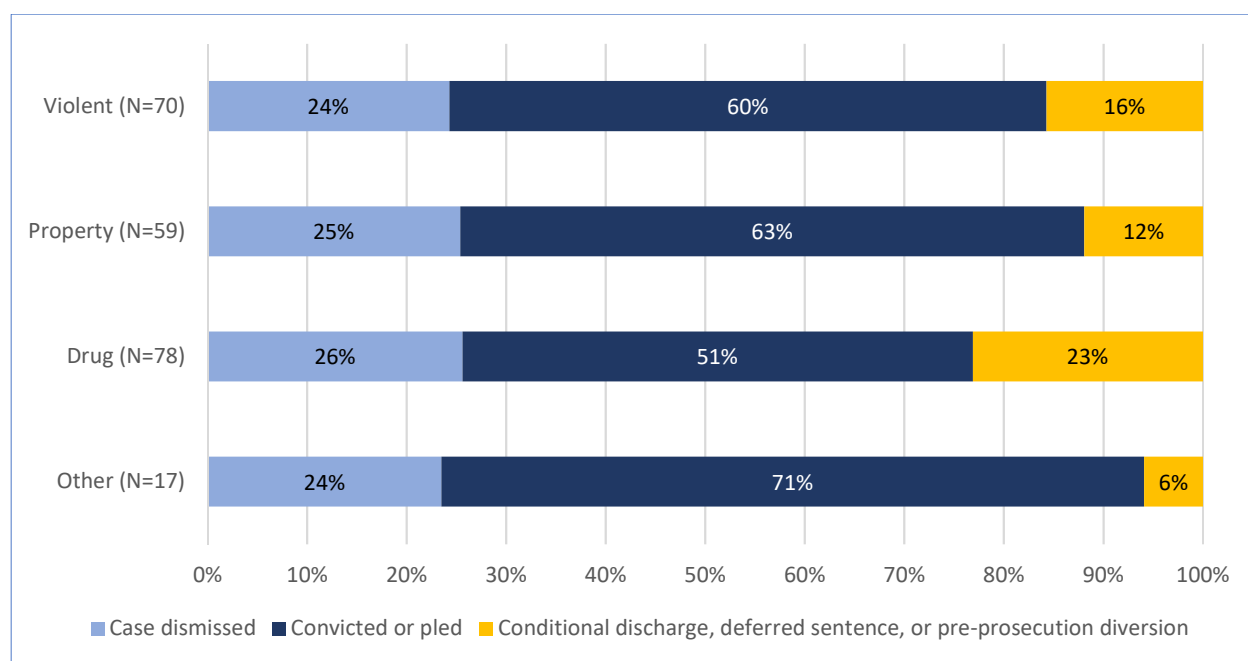
### Characteristics associated with district court case outcomes

Like case initiation type, disposition may vary by location, case characteristics or other factors. This section explores whether these variables are associated with district court case outcomes. The section concludes by summarizing the findings about the outcomes of each of these characteristics by case initiation type.

#### District court case disposition and offense characteristics

There were no meaningful differences in dismissal rates by most serious offense type, though there were some minor differences in other outcomes. Figure 12 illustrates these results.

Figure 12. Outcome of district court case by most serious charge in case.

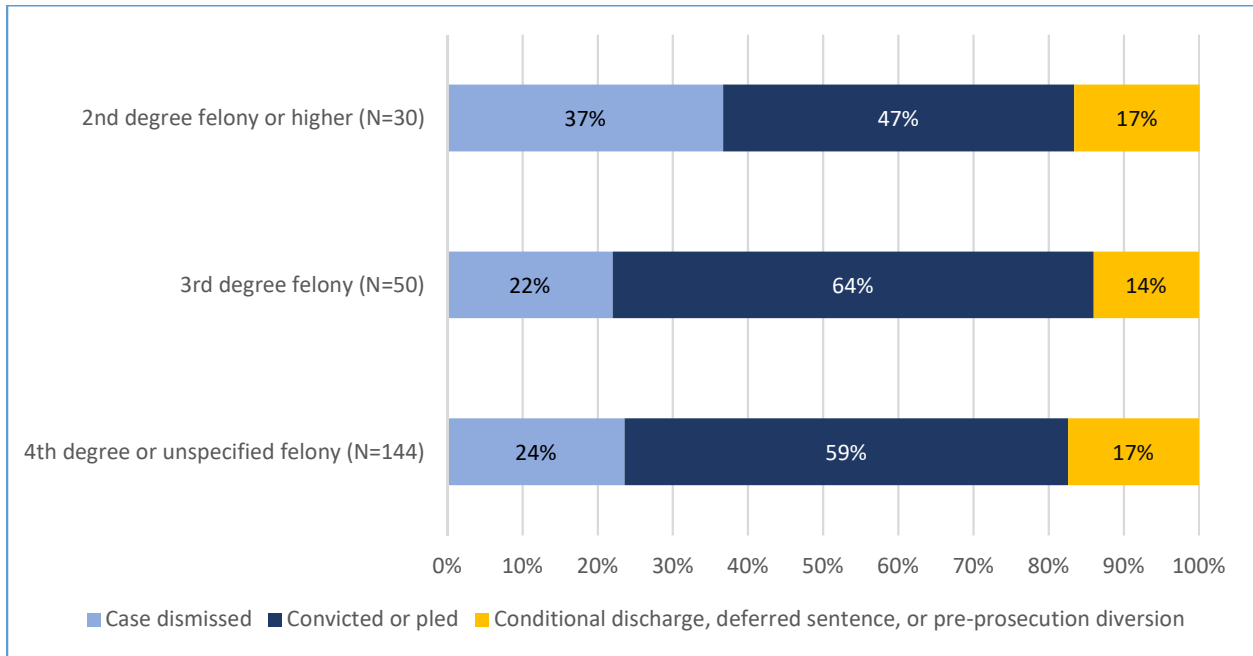


N=233, n/s

A smaller proportion of cases with a most serious offense that falls into the “other” category (6%) resulted in a conditional discharge, deferred sentence or pre-prosecution diversion compared to those with violent charges (16%), property offenses (12%) or drug offenses (23%). These differences, however, were not statistically significant at the .05 level.

Figure 13 displays the outcomes of district court cases by the degree of the most serious offense in the case.

Figure 13. Outcome of district court case by degree of most serious charge in case.



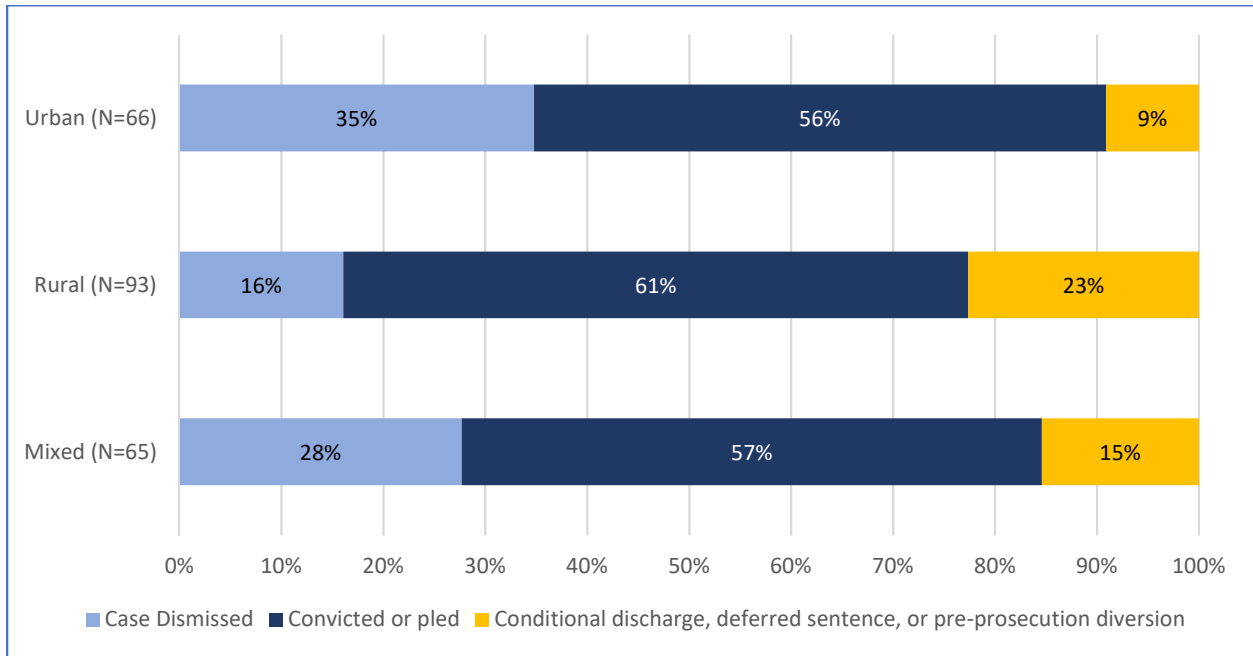
N=233, n/s

There were no statistically significant differences in case outcome by offense severity, though the courts or prosecutors dismissed a greater proportion of cases with a 2<sup>nd</sup> degree felony or higher. Among the remaining cases, the rates of conditional discharged, deferred sentence, or pre-prosecution diversion were similar across degree levels.

#### District court case dispositions and location

This section explores the outcomes of district court cases by urban designation and New Mexico region. Figure 14 begins by illustrating district court case outcomes by urban designation.

Figure 14. Outcome of district court case by urban designation.

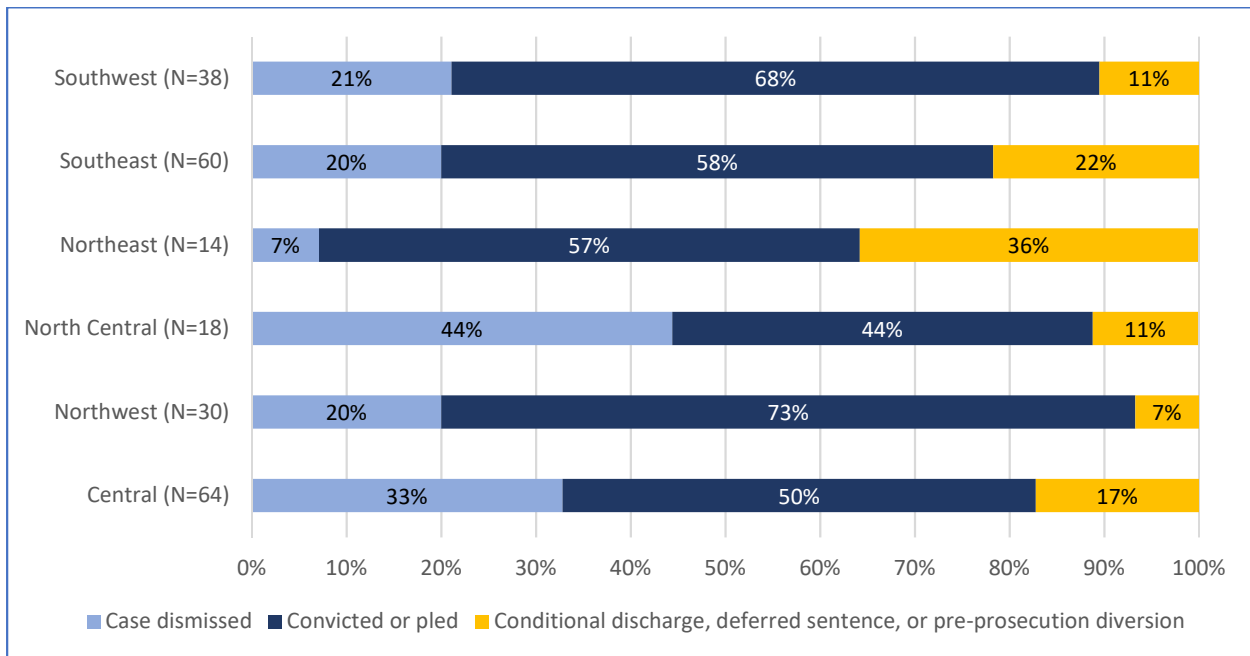


N=224,  $p < .05$ ; only case dismissed is significantly different

Case dismissal rates are higher in locations that include urban areas; the prosecutor or judge dismissed 35% of cases in districts that consist of only urban counties, 28% districts that have both urban and rural counties and just 16% in districts designated as only rural. These differences are statistically significant at the .05 level. While the rates of pleas or conviction at jury trial are similar regardless of urban designation, conditional discharges or deferred sentences are more prevalent in rural districts (23%) versus purely urban (9%) or mixed (15%). While notable, these differences were not statistically significant.

Figure 15 further explores the relationship between case outcome and location by focusing on region. While not statistically significant, there are some differences in dismissal rates by region.

Figure 15. Outcome of district court case by New Mexico region.



N=233, n/s

Notably, dismissal rates are highest in the north central (44%) and central (33%) regions of the state. Conversely, just 7% of the cases in the northeast region of the state were dismissed. Dismissal rates in the remaining regions were around 20%. Rates of pleas or convictions after a jury trial were highest in the northwest region of the state (73%) and lowest in the north central region (44%). The northwest region had the smallest proportion of cases involving a conditional discharge or deferred sentence (7%), while the northeast had the highest (36%). While there were notable differences, overall differences were not statistically significant at the .05 level.

#### Outcomes by case characteristics and case initiation type

There were no statistically significant differences in case outcomes by case initiation type (grand jury, held preliminary examination or waived preliminary examination) when controlling for case characteristics, save one. Prior to COVID-19, a greater proportion of cases initiated by a waived preliminary examination resulted in some sort of sanction (conviction, conditional discharge, deferred sentence, pre-prosecutorial diversion or plea in another case) than cases initiated by grand jury or after a judge heard the preliminary examination. After COVID-19 restrictions were in place, though, there were no significant differences found (see Table C.4. b in Appendix C.4).

#### Motives for case dismissal

Cases may be dismissed without prejudice for various reasons. In this sample, there were five main reasons for cases being dismissed: lack of evidence, procedural problems, the defendant's status, an alternate action was taken, or there was no clear reason provided. Table 1 summarizes the results. In addition to summarizing the reasons for dismissal overall, Table 1 summarizes the reasons cases were dismissed by both the type of court as well as preliminary examination status. In the lower courts, preliminary examination status is simply whether a preliminary examination occurred, regardless of

whether it was rescheduled (the hearing could be rescheduled but never take place). The district court categories reflect case initiation type: whether a judge heard the preliminary examination, whether the preliminary examination was waived, or whether it went to grand jury. The handful of cases that the prosecutor initiated directly in district court are captured in the “preliminary examination heard” category as these cases must proceed to a preliminary examination in the district court.

*Table 1. Reasons for case dismissal by jurisdiction and preliminary examination status.*

	Magistrate or metropolitan court			District court			
	Preliminary not held	Preliminary heard	Total in lower court	Preliminary examination heard	Preliminary examination waived	Grand jury	Total in district court
<b>Lack of evidence (N=85, 43%)</b>	<b>27 (36%)</b>	<b>43 (62%)</b>	<b>70 (49%)</b>	<b>3 (37%)</b>	<b>6 (23%)</b>	<b>6 (27%)</b>	<b>15 (27%)</b>
Victim/witness FTA <sup>a</sup> /not cooperative	10	17	27	2	3	2	7
Officer FTA/not cooperative	2	10	12	0	0	0	0
Insufficient evidence	13	16	29	1	3	4	8
No crime committed	2	0	2	0	0	0	0
<b>Procedural problems (N=36, 18%)</b>	<b>17 (23%)</b>	<b>11 (16%)</b>	<b>28 (19%)</b>	<b>1 (13%)</b>	<b>2 (8%)</b>	<b>5 (23%)</b>	<b>8 (14%)</b>
Time/discovery	16	11	27	1	2	3	6
Other	1	0	1	0	0	2	2
<b>Defendant-related (N=17, 9%)</b>	<b>2 (3%)</b>	<b>4 (6%)</b>	<b>6 (4%)</b>	<b>1 (13%)</b>	<b>4 (15%)</b>	<b>6 (27%)</b>	<b>11 (20%)</b>
Defendant incompetent <sup>b</sup>	2	4	6	1	3	4	8
Defendant deceased	0	0	0	0	1	2	3
<b>Other action (N=25, 13%)</b>	<b>9 (12%)</b>	<b>3 (4%)</b>	<b>12 (8%)</b>	<b>3 (37%)</b>	<b>6 (23%)</b>	<b>4 (18%)</b>	<b>13 (23%)</b>
Pled in another case	4	2	6	1	5	4	10
Another jurisdiction	3	1	4	1 <sup>c</sup>	0	0	1
Taking to grand jury	2	0	2	1 <sup>d</sup>	0	0	1
Remand	0	0	0	0	1	0	1
<b>Unclear (N=37, 19%)</b>	<b>20 (27%)</b>	<b>8 (12%)</b>	<b>28 (19%)</b>	<b>0 (0%)</b>	<b>8 (31%)</b>	<b>1 (5%)</b>	<b>9 (16%)</b>
No explanation/missing documents	13	3	16	0	0	0	0
“In the best interest of justice”	7	5	12	0	8	1	9
<b>Total (N=200)</b>	<b>75</b>	<b>69</b>	<b>144</b>	<b>8</b>	<b>26</b>	<b>22</b>	<b>56</b>

<sup>a</sup> FTA means failure to appear

<sup>b</sup> In other cases where defendant not found competent, the case was dismissed with prejudice

<sup>c</sup> Transferred to federal court

<sup>d</sup> Case was opened via criminal information in district court but preliminary examination did not occur

### *Reason for dismissal: all cases*

Most often, the prosecutor dismissed the case because the evidence was insufficient to continue (N=85, 43%), typically because a victim or other witness was not cooperative in the process or they failed to appear at a hearing. In some cases, case documentation indicated that the prosecutor needed more evidence to pursue the case. In a handful of these cases, the prosecutor expressed concerns with the admissibility of the data, indicating that law enforcement obtained the evidence illegally. In two cases, the prosecutor determined no crime was committed.

The next most common reason for case dismissal was related to procedures (N=35, 18%). In most of these cases, the judge dismissed the case because the prosecutor failed to complete discovery in time or did not make the witnesses available to the defense. In a handful of cases, there were other procedural barriers, including a failure to transport a defendant from the state prison and another state refusing extradition.

In 17 cases (9% overall), the court determined the defendant was incompetent or the defendant died before the case reached resolution. Note that in other cases where the court found the defendant incompetent, the court dismissed the case with prejudice; these cases are not represented in Table 1.

In 25 cases (13%), there was an alternative action taken in the case. Most often, the defendant pled guilty to charges in a concurrent case in exchange for dismissal in the instant case (n=16). In some cases, the court closed the current case so the charges could be pursued in another jurisdiction. In one case, the district court dismissed and remanded the case to the lower court for further prosecution on misdemeanor charges. In a few cases, the prosecutor requested dismissal with the intention of pursuing a grand jury indictment. None of the three cases represented in Table 1 resulted in a filing in district court, suggesting the grand jury returned a no bill (did not find evidence to support the charges), but there was no documentation to support that supposition.

Finally, in 37 cases (19%), the documentation was missing or too vague (dismissed “in the best interest of justice”) to classify the reason for the dismissal.

### *Reason for dismissal among lower court cases*

Magistrate and metropolitan courts may or may not hold a preliminary examination. Although lack of evidence is the most common reason for dismissal without prejudice overall, it is cited much more often when the judge hears the preliminary examination (62%) than when it is not held (36%). Conversely, compared to lower court cases that did involve a preliminary hearing, a greater proportion of cases that did not were dismissed for procedural problems (16% vs. 23%, respectively), or due to another action being taken (12% vs. 4%). Documentation for dismissal reasons was missing in a large proportion of cases, particularly those where a preliminary examination was not held (27%) versus those where it was held (12%).

### *Reason for dismissal among district court cases*

Some cases are dismissed after they are filed in the district court. Although not statistically significant, there were some notable differences for dismissal reason by case initiation type. A greater proportion of cases filed in district court after a preliminary examination was heard were dismissed due to a lack of

evidence or because the prosecutor pursued an alternate method of resolution (37% each) compared to cases initiated via a waiver or preliminary examination (23%) or grand jury indictment (27% lack of evidence, and 18% other action). A greater proportion of cases involving a grand jury indictment were dismissed due to procedural problems (23%) compared to those initiated after a judge heard the preliminary examination (13%) or waiver of preliminary examination (8%) or because there were defendant-related problems (27% vs 13% and 15%, respectively).

## Part 2: Preliminary examinations

Stakeholders raised concerns that preliminary examinations are resource intensive and are especially costly when the court has to reschedule them after calling the case. Further, they attribute most failed preliminary examinations to the failure of the defendant to appear at court. The purpose of Part 2 is to examine whether preliminary examinations are rescheduled; this differs from Part 1 which examined how cases move to district court which is the outcome of a preliminary examination. The outcomes of a held or rescheduled hearing can vary. For instance, if a rescheduled hearing occurs, the outcome may be a waiver of preliminary examination or a determination of probable cause; if it does not occur, the case may be dismissed or proceed via a grand jury indictment.

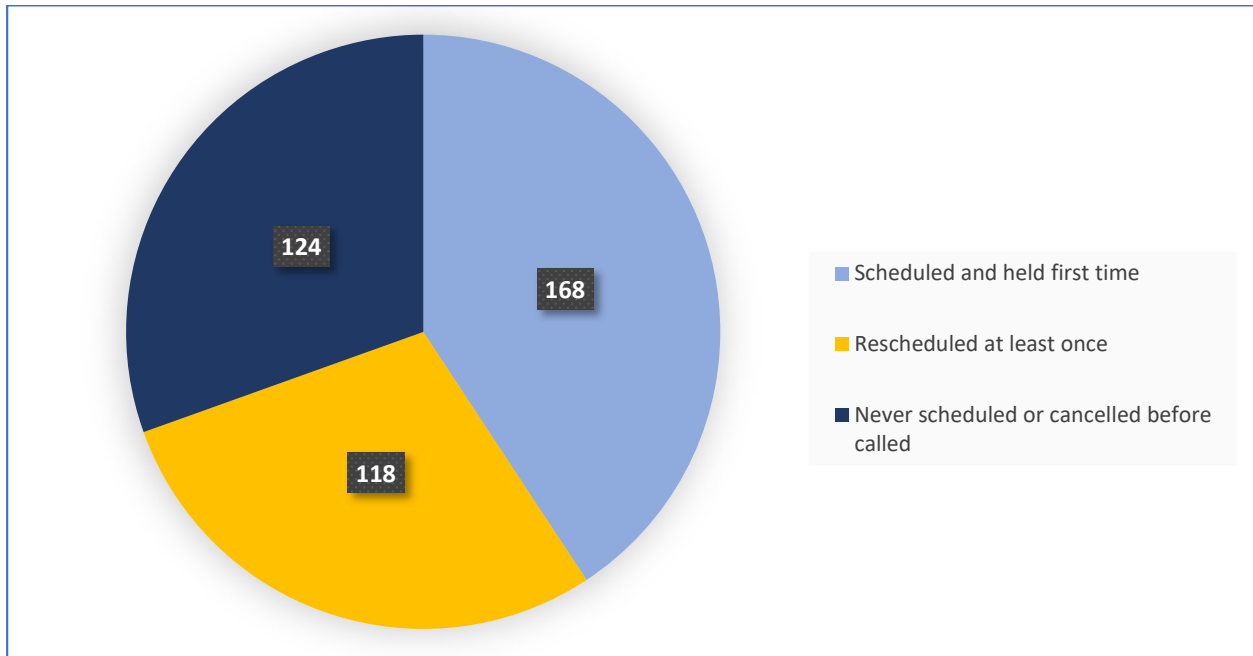
This section begins by exploring the status of preliminary examinations; specifically, how frequently preliminary examinations fail to occur (referred throughout as “rescheduled” even if the subsequent hearing does not occur) and the reasons for doing so. It then examines characteristics associated with rescheduled hearings. Finally, it explores whether case outcomes are associated with preliminary examination status.

### Status of preliminary examinations in the lower court

Cases may or may not involve a preliminary examination. In some cases, a preliminary examination is scheduled and heard the first time it is scheduled. In other cases, the preliminary examination is scheduled and is called, but has to be rescheduled for a variety of reasons; the rescheduled hearing may or may not occur. In yet other cases, the court may schedule a preliminary examination but cancel it before the date of the hearing, or may never schedule the hearing at all. When cancelled, the hearing is removed from the docket before the hearing date. Figure 16 illustrates the status of preliminary examinations for cases in this sample.



Figure 16. Status of preliminary examinations.



Notably, in 124 cases (30%), the lower court never scheduled a preliminary examination or cancelled the hearing before it was called. In these instances, the case was dismissed or disposed of in some fashion before reaching this point. The prosecutor initiated some of the cases that did not proceed to a preliminary examination directly in district court. Among the remaining 286 cases, 118 (41%) involved at least one failed preliminary examination. Thus, while most scheduled preliminary examinations are held the first time, many are not.

Preliminary examinations may fail to occur multiple times. Table 3 illustrates the number of times the preliminary examination failed to occur/had to be rescheduled per case, along with the total number of failed preliminary examinations.

Table 2. Number of times preliminary examinations were rescheduled.

<i>Number of times rescheduled per case</i>	<i>Number of cases rescheduled Per number of times</i>	<i>Total number of failed preliminary examinations</i>
1	74	74
2	28	56
3	8	24
4	5	20
5	1	5
6	1	6
8	1	8
<b>Total N</b>	<b>118</b>	<b>193</b>

The first column displays the number of times a case was scheduled for a preliminary examination, but failed to occur; the second shows the number of cases that were rescheduled that number of times; and the third illustrates the total number of preliminary examinations rescheduled (number of times

rescheduled multiplied by the number of cases rescheduled). Among the 118 cases that had one or more failed hearings, a total of 193 preliminary examinations failed to occur an average of 1.6 failed (rescheduled) preliminary examinations per case. While most cases (n=74) had only one failed preliminary examination, in one case, the preliminary examination was rescheduled eight times.

### Reasons preliminary examinations were rescheduled

Preliminary examinations may be rescheduled for a variety of reasons. Table 4 below summarizes the reasons for the rescheduled hearings among cases in this sample. Note that this does not summarize all failures to appear by key individuals at preliminary examinations; instead, this illustrates reasons for *rescheduled* hearings. In some cases, key individuals did not appear at a preliminary examination that heard by the judge, which then led to a dismissal of charges (see Table 1 in the section “Motives for case dismissal”).

Table 3. Reasons for rescheduling preliminary examinations.

<i>Reason hearing was rescheduled</i>	<i>Number of times it occurred</i>	<i>Percentage</i>
<b>Key person not present (n = 83, 43%)</b>		
Defendant failed to appear	66	34%
Defense attorney failed to appear	15	8%
Prosecution failed to appear	2	1%
<b>Called/reset (n = 108, 56%)</b>		
Appears all parties present	76	39%
Only defendant listed as present	21	11%
Defense attorney not listed	8	4%
Prosecuting attorney not listed	3	2%
<b>Other reason (n= 2, 1%)</b>		
Procedural issue	2	1%
<b>Total</b>	<b>193</b>	<b>100%</b>

There were three main reasons hearings were rescheduled: a key person was missing; the hearing was called and reset but the reason was not clearly documented; or there was some other reason. In 43% of rescheduled cases, there was clear documentation to indicate that one or more key people were not present. Most often, the defendant failed to appear (n=66, 34%). The defense attorney did not appear in 15 cases (8%). In some of these cases, we found that the defense attorney was not present because the defendant did not yet have a defense attorney secured or assigned. The documentation was not consistent enough to determine if this was typically the reason for their failure to appear, however. Finally, in two cases (1%), the prosecutor was not present as documented in the event notes. It was unclear why the prosecuting attorney was absent in these cases. In one of these cases, in addition to the prosecutor, neither the officer nor the victim appeared.

The most common reason for rescheduled preliminary examinations was that the case was called and reset, but there was no clear documentation indicating why this occurred (n=108, 56%). In these cases, we checked the list of “parties present” as documented in the Odyssey registry to determine whether any key individuals were missing. In most of these cases (n=76, 39%) all parties were present, so it is likely that one of the attorneys requested a continuance. In the remaining cases that were called and

continued/reset, one or more key people were not included in the list of “parties present” as documented in Odyssey. In 21 of these cases (11%), only the defendant was listed as present suggesting that both the defense and prosecuting attorneys were absent. In eight cases (4%), the defense attorney was not listed as present and in three cases (2%), the prosecuting attorney was not listed as present.

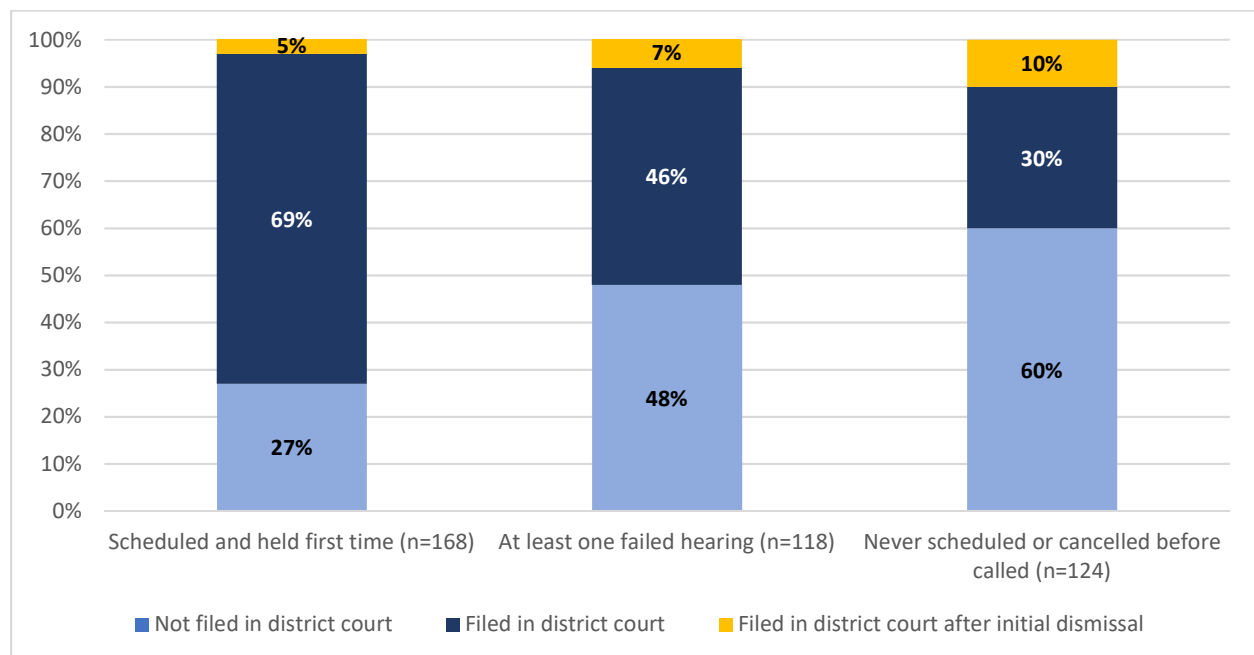
As noted previously, the documentation summarizing the reasons for the failure of the preliminary examination to occur is sometimes missing. Based on both the documented reason and data gleaned from the Odyssey registry which indicates which parties were present during the preliminary examination, cases are rescheduled because the defendant or the attorney(s) were not present in 44% to 60% of cases (when adding the cases called/reset with missing parties). While defendants’ failure to appear comprise the majority of rescheduled hearings (34%) due to someone failing to appear, it is notable that preliminary examinations are rescheduled 10% to 26% of the time because one or both attorneys are absent.

We did find that in two cases, there were procedural barriers that required the hearing to be rescheduled. In one case, a judge recused themselves, and in the other, the defendant was not transported to the hearing.

#### Case progression by status of preliminary examination

Figure 17 illustrates the status of the preliminary examination and whether the case was ever filed in district court.

*Figure 17. Status of preliminary examination and filing in district court.*



N=410, p<.001

Cases in which a preliminary examination was scheduled and held progressed to district court more often than cases that had at least one failed preliminary examination hearing or those in which a hearing

was never scheduled or cancelled before called. Approximately half of the cases (48%, n=57) that had one or more failed preliminary examinations were never bound over to district court. When scheduled and held the first time, just 27% (n=45) were never bound over. The majority of cases (60%, n= 76) that ended before a preliminary examination was scheduled were never bound over. A small number of cases were initially dismissed without prejudice and then refiled. A greater proportion of cases in which a preliminary examination was never scheduled or was cancelled consisted of refiled cases (10%), compared to those in which a hearing was scheduled and held (5%) or rescheduled (7%). The differences were statistically significant at the .05 level.

#### Case initiation type by status of preliminary examination

There were 234 cases slated to be bound over to district court. Table 4 illustrates the method of case initiation by the status of the preliminary examination and whether the district uses grand juries.

*Table 4. Case initiation type by preliminary examination status and district use of grand jury.*

Case initiation type	Preliminary examination status			
	<i>District has grand jury</i>	<i>Scheduled and held first time</i>	<i>At least one failed hearing</i>	<i>Never scheduled or cancelled before called</i>
Grand jury indictment	Yes	22%	43%	90%
	No	N/A	N/A	N/A
Preliminary examination heard	Yes	22%	14%	0%
	No	7%	8%	0%
Preliminary examination waived	Yes	55%	40%	2%
	No	93%	92%	0%
Criminal information filed in district court	Yes	2%	3%	8%
	No	0%	0%	0%
<b>Total</b>	<b>Yes</b>	<b>60</b>	<b>35</b>	<b>48</b>
	<b>No</b>	<b>62</b>	<b>27</b>	<b>2</b>

P<.001 for districts with grand jury; n/s for districts without

There is a statistically significant relationship ( $p<.001$ ) between preliminary examination status and case initiation type, but only in districts that use grand juries. As seen in Table 6, cases are more likely to be bound over by grand jury if a preliminary examination is rescheduled, and if there is never one scheduled. This suggests that when there is a failed hearing, some prosecutors pursue a grand jury indictment to initiate the case.

Prosecutors only filed a criminal information directly in district court in districts that use grand juries. This occurred most frequently when there was no preliminary examination filed.

In districts that do not use grand juries, there were no significant differences in case initiation type regardless of preliminary examination status. Instead, the vast majority of cases were initiated via a waiver of preliminary examination.

## Case outcomes by status of preliminary examination

Table 5 illustrates the outcomes of cases by whether a preliminary examination was ever rescheduled by court type.

*Table 5. Case outcomes by court type and status of preliminary examination.*

	Preliminary Examination Status		
	Scheduled and held first time (N=168)	At least one failed hearing	Never scheduled or cancelled before called
<b>Dismissed without prejudice or unknown type, nolle prosequi*</b>			
Lower court	19%	39%	53%
District court	9%	9%	11%
<b>Total</b>	<b>28%</b>	<b>48%</b>	<b>64%</b>
<b>Pre-prosecution diversion, conditional discharge, deferred sentence, or conviction</b>			
Lower court	7%	5%	6%
District court	61%	38%	26%
<b>Total</b>	<b>68%</b>	<b>43%</b>	<b>32%</b>
<b>Dismissed with prejudice, discharged, or acquitted</b>			
Lower court	2%	3%	1%
District court	1%	2%	2%
<b>Total</b>	<b>3%</b>	<b>5%</b>	<b>3%</b>
<b>Pending disposition</b>			
District court	2%	3%	2%
<b>Total N</b>	<b>168</b>	<b>118</b>	<b>124</b>

N=410, P<.001 \*includes the one case that was never filed in district court

Cases that involved a preliminary examination that was held and not rescheduled were much less likely to be dismissed by the prosecutor (28%) than cases involving a failed preliminary examination (48%) or those where a preliminary examination was never scheduled (64%). These differences, though, mostly occurred while the case was in the lower courts. If the case progressed to the district court level, there were no meaningful differences by preliminary examination status.

Cases with a preliminary examination scheduled and held the first time were much more likely to result in some sort of sanction (68%) compared to those with a failed hearing (43%) or a hearing that was never scheduled (32%). Unlike dismissed cases, however, these differences are driven by cases that move to the district court.

## Characteristics associated with status of preliminary examinations

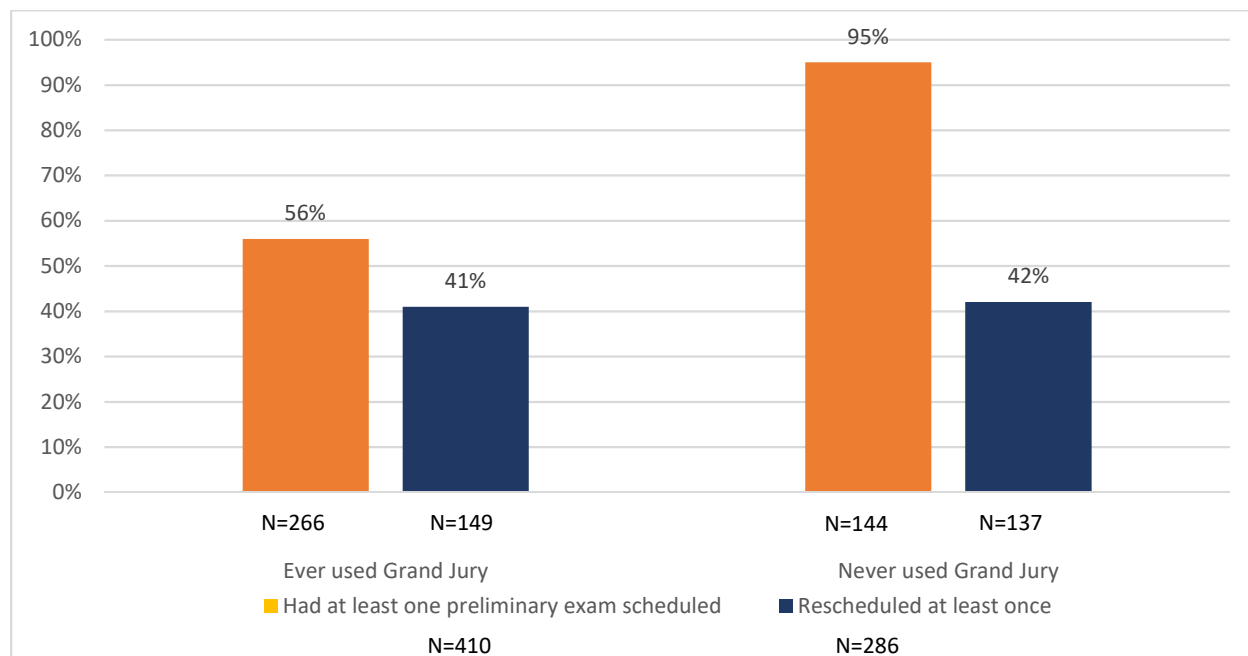
This section explores whether case characteristics, geography and/or COVID-19 restrictions are associated with whether a preliminary examination is ever held and whether the hearing is ever

rescheduled. Although few statistically significant differences exist, there are some notable patterns in the data.

#### *Preliminary examinations and use of grand jury in district*

As would be expected, preliminary examinations are much more likely to be scheduled in districts that do not use grand juries: 95% of cases in districts that do not use grand juries had at least one preliminary examination scheduled compared to 56% in districts that do use grand juries; these differences were statistically significant ( $p < .001$ ). Despite that, the rate of failed preliminary examinations was virtually the same and no statistically significant differences were found. These results are displayed in Figure 18.

*Figure 18. Preliminary examination status by use of grand jury in the district.*

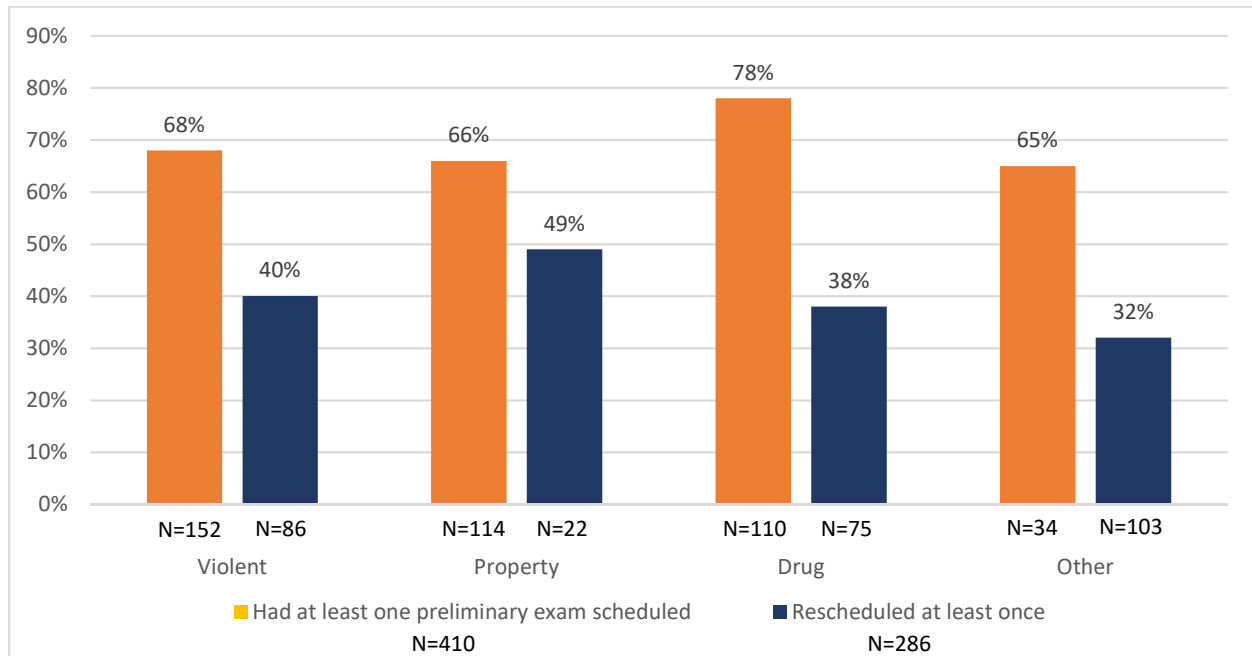


$P < .001$  for scheduled preliminary examination; n/s for rescheduled

### *Preliminary examinations and offense characteristics*

Figures 19 and 20 explore the relationship between offense characteristics and preliminary examination status.

*Figure 19. Preliminary examination status and most serious offense.*

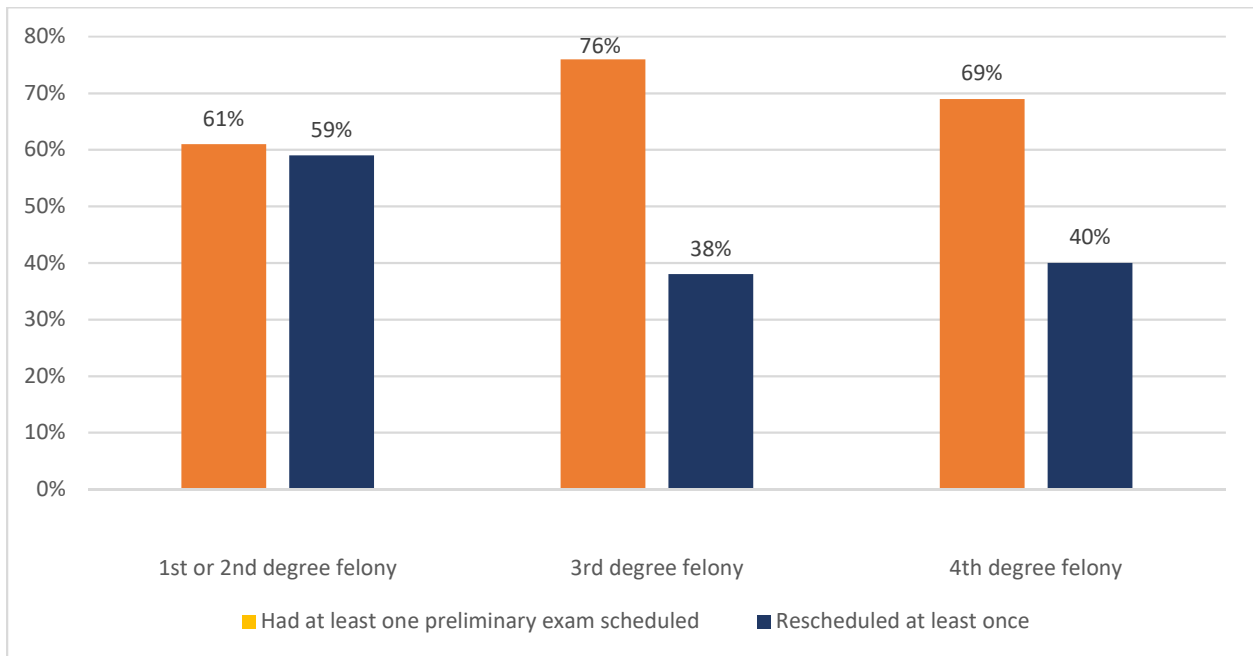


n/s

Whether a preliminary examination was ever scheduled varied little by most serious offense type (Figure 19). Although not statistically significant, one notable difference was that about 10% more cases with a drug charge had a preliminary examination scheduled compared to the remaining cases.

Among cases where a preliminary examination was scheduled, a greater proportion (49%) of those with a property crime experienced at least one failed hearing compared to those with violent (40%), drug (38%) or “other” (32%) offense types. Those with “other” offense types were more likely to have a successful preliminary examination hearing the first time it was scheduled.

Figure 20. Preliminary examination status and degree of most serious offense.



n/s

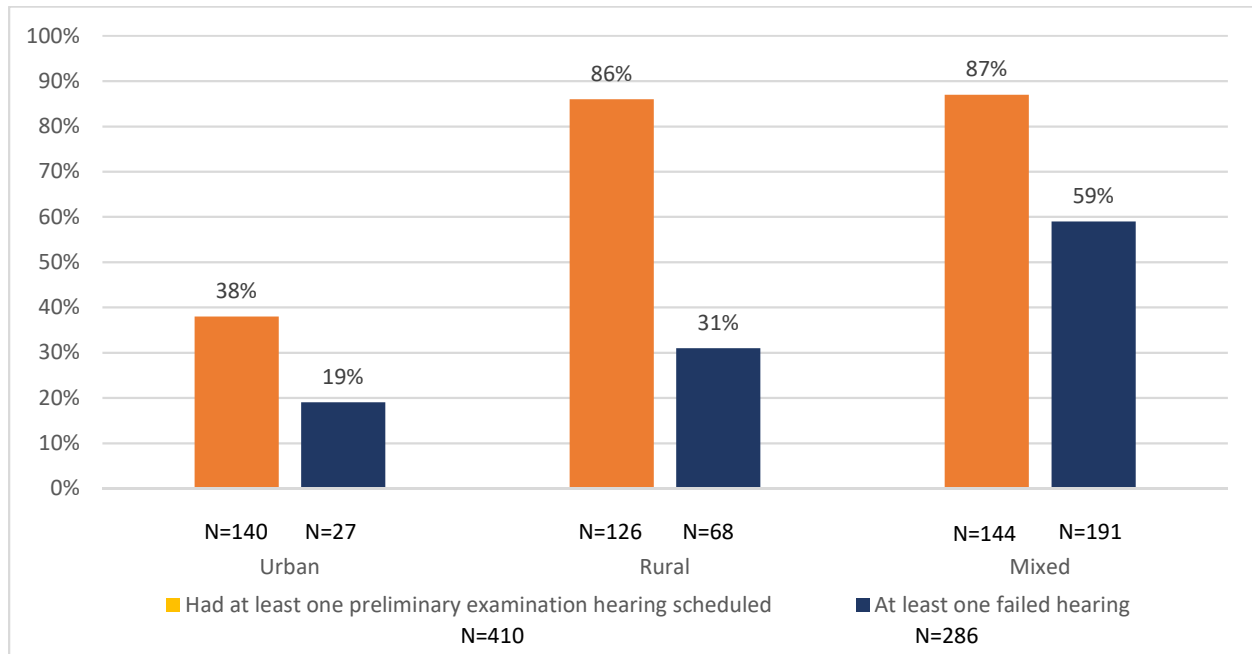
A slightly greater proportion of cases involving a 3<sup>rd</sup> degree felony (76%) had at least one preliminary examination scheduled compared to those with a 4<sup>th</sup> degree or unspecified degree of felony (69%) or 2<sup>nd</sup> degree or higher (61%). A greater proportion of cases involving a 2<sup>nd</sup> degree felony or higher had at least one preliminary examination rescheduled compared to those that were 3<sup>rd</sup> degree or less. These differences, though, were not statistically significant.



## Preliminary examinations and location

The status of the preliminary examination did vary significantly by urban designation. This is illustrated in Figure 21.

Figure 21. Preliminary examination status by urban designation

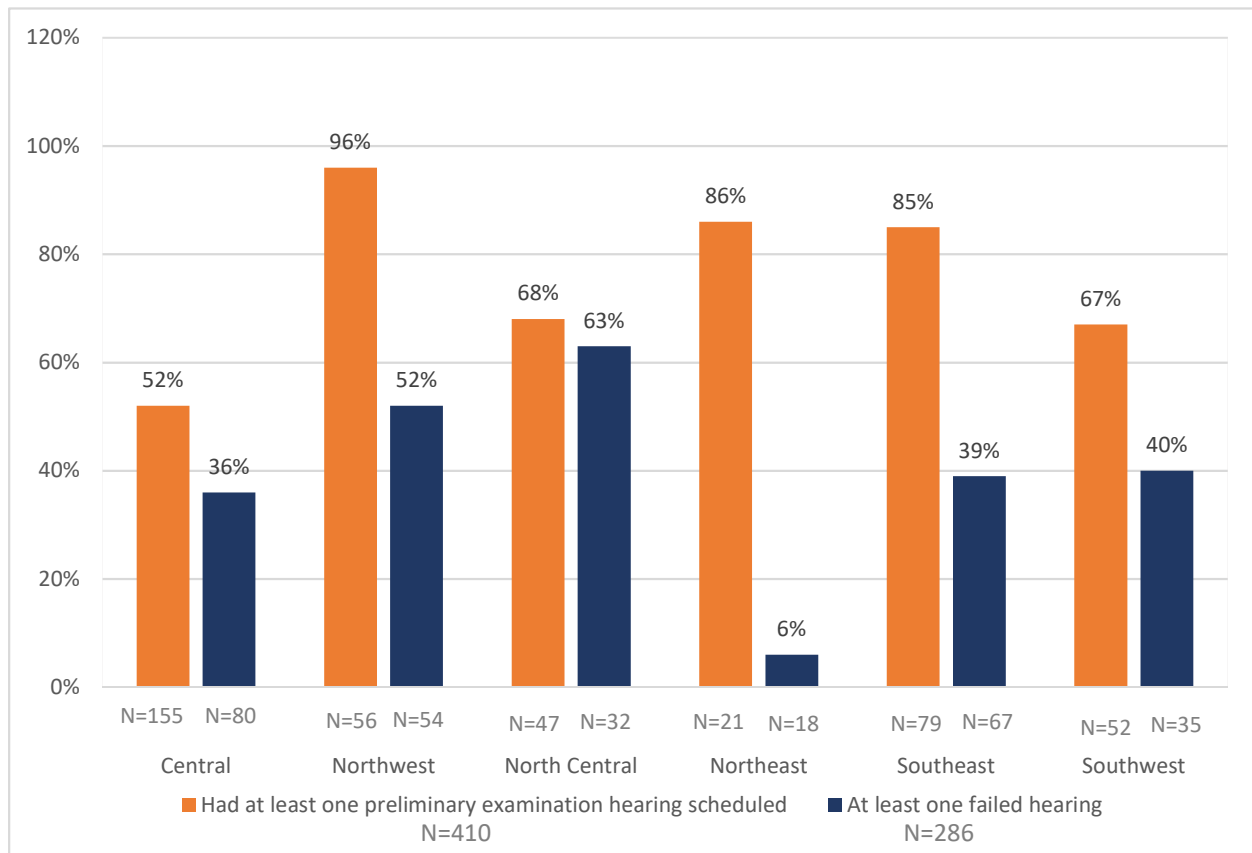


P<.001 for both

Cases in urban districts (38%) were significantly less likely to have a preliminary examination scheduled compared to those in rural (86%) or mixed (87%) districts. Given the relationship between urbanization and whether a district uses grand juries, this is not surprising. However, there is also a relationship between urban designation and whether a scheduled preliminary examination is rescheduled that is not a reflection of the use of grand jury alone. Specifically, in urban districts, the rate of rescheduled hearings is significantly lower (19%) than in rural (31%) or mixed (59%) districts. The statistically significant differences, though, are between urban areas compared to both rural and mixed areas; no statistically significant differences were found between rural and mixed districts.

The status of the preliminary examination also varied significantly by region of the state, as depicted in Figure 22.

Figure 22. Preliminary examination status by region



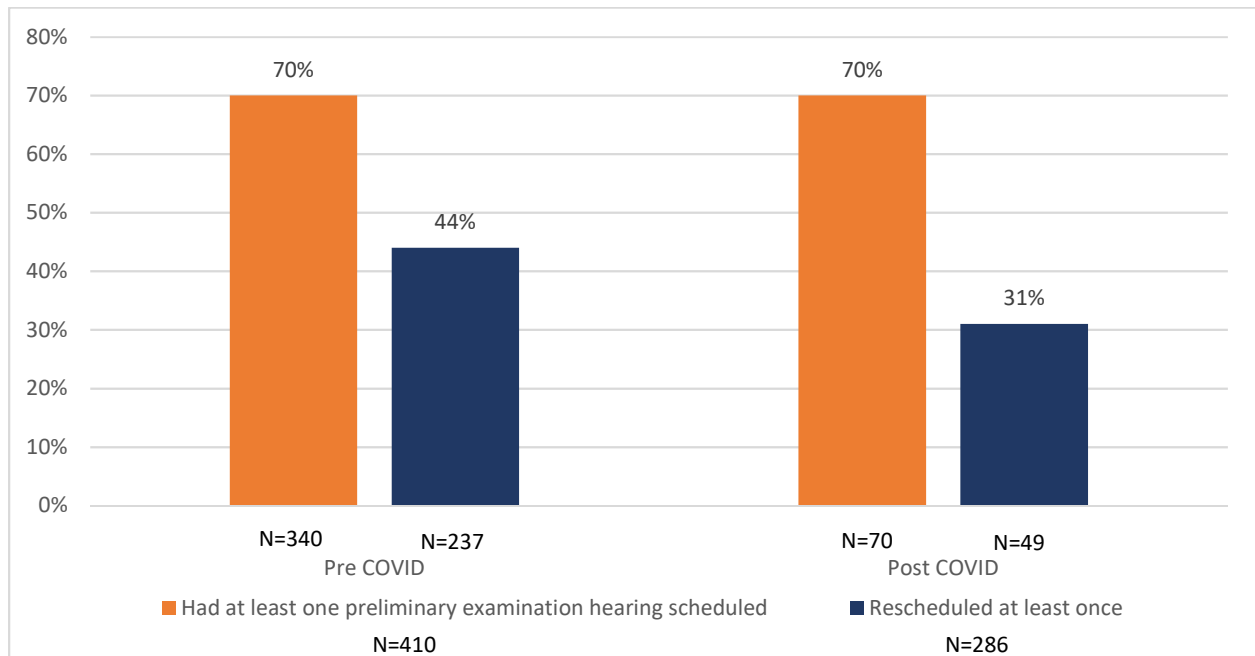
P<.001 for had preliminary examination hearing scheduled P<.05 for at least one failed hearing

Courts in the northwest, northeast, and southeast regions of the state scheduled preliminary hearings more often than those in central, southwest, or north central regions of the state corresponding to use of grand juries. Failure rates, though, did not correspond to frequency of scheduled hearings. Cases in the north central and northwest regions of the state had the highest rates of failed preliminary hearings (63% and 52%, respectively). Conversely, just 6% of scheduled preliminary hearings in the northeast region of the state failed to occur. Differences were statistically significant.

### Preliminary examinations and COVID-19 restrictions

Finally, Figure 23 explores the status of preliminary examinations and COVID-19 restrictions.

*Figure 23. Preliminary examination status and COVID-19 restrictions.*



n/s, n=410

The implementation of COVID-19 restrictions had no impact on whether a preliminary examination was ever scheduled: 70% of cases had at least one preliminary examination scheduled both pre and post-COVID-19 restrictions. Cases were slightly less likely to be rescheduled, however, after the COVID-19 restrictions were implemented (44% prior to COVID-19 versus 31% afterwards). These differences, although not statistically significant at the .05 level, are notable.

## Summary and Conclusions

Scholars, as well as local and national stakeholders, have raised concerns about the methods prosecutors use to initiate felony cases. Some argue against preliminary examination hearings, citing that the method is subject to frequent rescheduling. Most, however, argue against the use of grand juries, which prosecutors may use as an alternative to preliminary examinations. Opponents maintain that grand juries do not protect innocent defendants, that they are neither cost nor time-effective, and may be less likely to result in a conviction. New Mexico, however, has limited data on the effectiveness of either process, leaving a gap in knowledge this study aims to help fill. The primary objectives of this research were to 1) examine the influence of case initiation type on felony case processing, and 2) to explore the rescheduling of preliminary examination hearings. Additionally, this study examined whether COVID-19 related restrictions influenced case initiation type, outcomes, and the function of preliminary examinations.

### Case initiation and felony case processing

The first part of this study explored the progression of a sample of 410 felony cases from their initiation in the lower courts (magistrate or metropolitan) to their disposition. While some cases were resolved in lower court, either because the case was dismissed or adjudicated, others proceeded to district court.

#### How did prosecutors initiate cases in district court?

Over half of the cases in this sample proceeded to district court via grand jury indictment, preliminary examination, a waiver of preliminary examination, or directly filed in district court. While the New Mexico constitution allows prosecutors the discretion to pursue felony charges via a grand jury indictment or preliminary examination hearing, in practice, not all districts use the grand jury system. In districts that do offer grand juries, the most common method used by prosecutors to initiate cases in district court was by grand jury (53%). The next most common method of case initiation in districts that use grand juries was a waiver of preliminary examinations (32%). Prosecutors initiated just 11% of cases via a preliminary examination hearing. Similarly, in districts that did not give prosecutors the option of a grand jury, prosecutors initiated cases via a waiver of preliminary examination much more often than by a preliminary examination hearing (91% versus 9%). Thus, regardless of whether a grand jury option is available, only about 10% of cases proceed to district court after a judge hears the evidence at a preliminary examination. When grand juries are not used, the case is more likely to proceed via a waiver. This is an important finding because it suggests the likelihood of a case being vetted before a judge does not depend on whether a grand jury is available.

#### Does case initiation type vary by location?

This study found that case initiation type does vary by location. The use of grand jury was highest in central, north central and southwest regions (driven by Bernalillo, Dona Ana, Santa Fe), but never used in the northeast area of the state. Further, prosecutors in urban districts predominantly use grand juries to initiate cases. Conversely, in rural districts or those that are a mix of both rural and urban, prosecutors most commonly initiated cases after a waiver of preliminary examination.

### Are grand juries reserved for more serious cases?

Experts argue that only the most serious cases should be indicted via a grand jury (see, e.g., Griller, 2015). In the present study, while there were no statistically significant differences in the use of grand juries by offense type or severity there were some notable differences. Specifically, grand juries were more common when the most serious offense was a property crime or violent crime. Further, the proportion of grand jury indictments increased with the degree of the most serious offense.

In areas that do not use grand juries, we observed the same patterns for a held preliminary hearing (rather than a waiver). This suggests that when grand juries are not available, more serious offenses are more likely to be heard in front of a judge rather than waived.

### Did COVID-19 restrictions impact case initiation type?

After the governor issued COVID-19 restrictions, there was a three-fold increase in the use of preliminary examination hearings while waivers remained the same. This suggests that cases that would have been initiated by grand jury were initiated by preliminary examination instead of waivers of preliminary hearings. This further supports the supposition that if a grand jury is not available in districts that typically use them, the cases that would have been presented to a grand jury are likely to be heard by a judge at a preliminary examination instead. Future studies should explore whether this relationship holds in other circumstances.

### Is there an association between preliminary examinations and case outcomes in the lower court?

This study examined the disposition of cases by whether a preliminary examination occurred in the lower court, and by case initiation type for those cases that progressed to the district court. Among cases that ended in the lower courts, a greater proportion involving a preliminary examination were resolved by pre-prosecution diversion, conviction, conditional discharge or plea in another case (20%) versus those where no preliminary examination was held (11%). This is not an apples-to-apples comparison, though, as cases that do not go to a preliminary hearing and drop out at the lower court level (and therefore not bound over by grand jury or other means) likely are not strong cases. Judges found no probable cause in 5% of cases that ended in the lower courts.

### Is case initiation type associated with case outcomes in the district court?

Prosecutors may initiate a case in district court after a finding of probable cause at a preliminary examination; a waiver of preliminary examination; a return of a true bill from a grand jury; or the prosecutor may file the case directly in district court for a preliminary examination hearing in front of a district court judge. One concern expressed by some stakeholders is that cases that proceed by grand jury indictment are more likely to be dismissed or acquitted. Although not statistically significant, cases involving a waiver were slightly more likely to result in some sort of sanction than those initiated either by grand jury or a held preliminary examination. Further, once cases proceed to district court, there is no notable difference in outcomes for cases initiated via grand jury indictment as compared to a held preliminary examination.

### Why are cases dismissed?

Cases can be dismissed at any point. Cases are most often dismissed without prejudice, meaning that the prosecutor can refile charges at a later date. Prosecutors, however, did not refile charges in most cases; they did so in just 27 cases dismissed without prejudice in the lower court, and none of the cases dismissed without prejudice in district court.

In both lower and district courts, cases are most often dismissed due to lack of evidence, either because a victim, witness, or officer failed to appear or was not cooperative, or because the prosecutor or judge determined that the evidence was insufficient. This occurred with the most frequency in lower court, especially among cases where the preliminary examination was held. Conversely, cases that ended in the lower court before a preliminary examination was held were dismissed most often for procedural problems or because the prosecutor or court took some other action in the case.

In district court, while the most frequent reason for case dismissal was also lack of evidence, this varied somewhat by case initiation type. Cases that proceeded to the district court after a preliminary examination was held or was waived were dismissed most often for lack of evidence or because the prosecutor took some other action in the case. Although lack of evidence was also a common reason for dismissal for cases that proceeded after a grand jury indictment, it is notable that a greater proportion were dismissed due to concerns about the defendant's competence. Further, relative to cases involving a held preliminary examination, a greater proportion of cases that proceeded by a waiver of preliminary hearing were dismissed after the defendant was found incompetent. While the number of cases that proceeded to district court is small, it is possible that some cases involving non-cooperative witnesses and defendants deemed incompetent are screened out at the lower court level, especially when the case involves a preliminary examination. Future studies with a larger sample size should explore this hypothesis.

### Preliminary examinations

The second part of this study investigated the frequency and reasons for the rescheduling of preliminary examination hearings, and the influence rescheduled hearings may have on a case. Although not all cases in this sample were scheduled for a preliminary examination hearing, of those that were, 41% had at least one hearing rescheduled. Further, while most hearings were rescheduled only one time, one case had eight rescheduled hearings, for an average of 1.6 failed hearings per case. Thus, it is not uncommon for preliminary examinations to be rescheduled one or more times.

### Why are preliminary examinations rescheduled?

The preliminary examination hearings included in this study are scheduled in the lower courts, which are not courts of record. While many court cases do have documentation to explain why the hearing did not occur, not all did. When the hearing failed to occur, the records most often indicate the hearing was called and reset, but no documentation existed to explain why it was rescheduled. There were, however, typically notations about parties present. In most of these cases, all the parties were present suggesting that either the prosecution or defense was not prepared. When a case was rescheduled due to a key person failing to appear, it was most often the defendant who failed to appear, but in some cases, one or both attorneys failed to appear. One reason defense attorneys did not appear was

because the defendant had not yet retained an attorney, or in public defender cases, one had not yet been assigned. The reasons for the prosecuting attorneys' failure to appear was not noted.

### Does rescheduling impact the progression of the case?

There was an association between case initiation in district court and failed preliminary examination hearings. Specifically, cases with one or more failed hearings were less likely to progress to district court compared to those in which the hearing was scheduled and held the first time (52% vs. 73%). When cases did move to district court, a greater proportion of cases that had a failed hearing progressed to district court by grand jury indictment (24%) than those held the first time (11%) and were less likely to be waived (61% with failed, 75% scheduled).

There is a significant relationship between preliminary examination status and case initiation type, but only in districts that use grand juries. Cases are more likely to be bound over by grand jury if a preliminary examination is rescheduled, and if there is never one scheduled. This suggests that when there is a failed hearing, some prosecutors pursue a grand jury indictment to initiate the case.

### Is rescheduling associated with case outcomes?

Rescheduling is significantly related to case outcomes, but this differs somewhat by the level of the court. Among cases in the lower courts, rates of dismissal vary by whether the preliminary examination status. Prosecutors were much less likely to dismiss cases involving a successful preliminary examination (held and not rescheduled, 28%), than cases involving a failed preliminary examination (48%) or those where a preliminary examination was never scheduled (64%). Once cases move to district court, there are significant differences in whether the case involves a sanction. Specifically, cases with a preliminary examination scheduled and held the first time were much more likely to result in some sort of sanction (68%) compared to those with a failed hearing (43%) or a hearing that was never scheduled (32%). These differences may reflect the strength of the case, including whether witnesses are available throughout the case.

### What characteristics are associated with rescheduled hearings?

This study found that only a few characteristics are associated with rescheduled hearings. Whether the district uses grand juries is not associated with the rate of failed hearings. Further, while there are no statistically significant differences by offense severity or type of most serious offense, failures occurred more often in the most serious cases (2<sup>nd</sup> degree felony or higher) and slightly more often in property offenses. Location was significantly related to rescheduled hearings. Cases in the north central and northwest regions of the state had the highest rates of failed preliminary hearings (63% and 52%, respectively). Conversely, just 6% of scheduled preliminary hearings in the northeast region of the state failed to occur. Finally, failures occurred least often in urban areas compared to those in rural or mixed areas.

## Conclusions

One of the key concerns stakeholders raise about the use of grand juries is that nearly all result in an indictment: there is no real screening to separate strong cases from weak ones. Thus, preliminary

examination hearings, where a judge can determine probable cause, is thought to be a better way to determine probable cause. This study found that judges determined there was no probable cause in approximately 20% of cases that went to a preliminary examination hearing. This supports the idea that some portion of cases should not progress to district court. Importantly, though, there were no significant differences in outcomes once cases reached district court. Further, prosecutors dismissed some cases before proceeding to either a preliminary examination or grand jury. Therefore, while the preliminary examination may help to screen out some cases, there is no evidence that cases initiated via grand jury are less strong than those initiated by preliminary examination hearing; weaker cases appear to be dismissed prior to filing in district court regardless of whether a preliminary examination occurs. Most cases in this sample, though, proceeded to district court after a waiver of preliminary examination. These cases had the greatest proportion of sanctioned cases compared to either held preliminary examinations or grand juries. It is possible that these cases are less complex and the evidence is strong, explaining both the choice to waive the hearing and the case outcome. It is important to note, however, that only a handful of cases in this sample ever went to trial. Instead, nearly all cases that resulted in a conviction or some other sanction were the result of a plea bargain regardless of case initiation type. If cases had been tried in front of a jury, the outcomes may have differed, particularly for cases initiated via preliminary examination versus grand jury.

Consultants analyzing case processing in the 2<sup>nd</sup> Judicial District in Bernalillo County, New Mexico argue that the district overuses the grand jury process and that it should be limited to the most serious of cases (Steelman et al., 2009; Griller, 2015). The current study did not limit the data to the 2<sup>nd</sup> Judicial District, but the sample was stratified by county throughout the state. Grand juries were used predominantly in urban districts, especially in the central region (which includes the 2<sup>nd</sup> Judicial District), and to a lesser extent, the southwest region of the state. Grand juries were also common in some areas that include both rural and urban areas, such as the north central region of the state. While there was some evidence that cases pursued by grand jury were more serious in terms of offense type and degree, there were no statistically significant differences by these characteristics. In other words, prosecutors use grand juries for all types of cases, though a slightly greater proportion are more serious offenses.

While some argue that preliminary examination hearings are more cost-effective, others contest that supposition, pointing to frequent rescheduled preliminary hearings and the costs associated with these failed hearings. This study found that a large proportion of scheduled preliminary hearings are rescheduled, though this mostly occurs in districts that include a mix of rural and urban counties and to a lesser extent, purely rural districts. The proportion of failed preliminary examinations is lowest in urban areas, where the concern was raised. When preliminary examinations are rescheduled, it most often occurs after the case is called and reset and all parties are present. When the case is rescheduled because one or more key individuals failed to appear, it is the defendant who fails to appear most often, but some preliminary examinations had to be rescheduled because one of the attorneys failed to appear.

Finally, one concern is that prosecutors will initiate fewer felony cases in district court if the preliminary examination is the primary method (Torrez, 2018). In part, this may be because witnesses are less likely to attend the preliminary examination, resulting in dismissed cases. The onset of COVID-19 resulted in restrictions across the state that limited the use of grand juries. It is notable that there was no difference in case dismissal rates in the lower courts after COVID-19 restrictions occurred (86% pre COVID-19 vs. 85% post COVID-19). There were also no significant differences in the rates of case initiation in district court after the COVID-19 restrictions: 58% of cases moved to district court before



the COVID-19 restrictions; this dropped slightly to 53% after the restrictions. This suggests that the increased use of preliminary examination hearings does not increase dismissal rates, at least at the lower court level, and has minimal impact on case initiation rates. However, given the changes due to COVID-19 restrictions, there could be other factors that influence case initiation besides availability of grand juries.

## Limitations

There are important limitations to this study to consider. First, the sample size is small. While this allowed research staff to collect detailed data about the court cases manually, this reduces statistical power. There were some interesting patterns in the data that were not statistically significant. For instance, these data suggest that prosecutors initiate certain types of cases (violent and property offenses, and those with more serious charges as measured by the degree of the felony) via a grand jury. In districts that do not use grand juries, these same cases are more likely to be initiated after a preliminary hearing rather than a waiver of preliminary hearing. With a larger sample size, we could determine if those patterns hold and whether the differences are statistically significant. Additionally, a larger sample size would allow us to examine the data in more detail. For instance, we could explore differences by district rather than region with a larger sample size.

A second limitation related to the sample size is that we did not present multivariate analyses in this report. A larger sample size, with additional relevant information like defendant's criminal history, would allow us to better understand the choices prosecutors make in terms of case initiation and how that influences case disposition. Further, including more information about the defendant would aid in better understanding the likelihood that a preliminary hearing will be rescheduled. Besides criminal history (including history of failures to appear), custody status should be considered as well as strength and complexity of the case.

Future studies should use a larger sample size. However, one strength of the current study is that some information is not easily gleaned from the automated court data we receive, requiring manual data collection. For instance, the data allow us to determine if a case is opened in district court by grand jury indictment or criminal information (with some limitations) but are not fine-grained enough to determine whether the preliminary hearing was held resulting in the criminal information. There may be other methods to obtain this information, but given the importance of distinguishing between case initiation methods, we suggest the court explore incorporating a value in either the disposition codes or case opening codes to reflect these differences.

This study utilizes data from cases disposed between 2017 and 2020, just a few months into the pandemic. The criminal justice system is constantly changing, and during the pandemic, it was forced to adjust rapidly. For example, during fiscal year 2021, at the height of state COVID-19 restrictions, the 2<sup>nd</sup> Judicial Court reported just 3% of cases were initiated via grand jury compared to 23% in fiscal year 2022; the current study found 74% in the 2<sup>nd</sup> Judicial District of cases were initiated by a grand jury prior to COVID-19 restrictions. Further, although grand juries are held five to six times per month currently, there are plans to expand depending on staff and space. Changes like this can greatly alter the progression of cases, and perhaps outcomes.

Finally, this study does not assess one of the key arguments in favor of utilizing preliminary examinations over grand juries: cost effectiveness. This study does illustrate that many preliminary hearings are rescheduled, but in no way could it be used to determine whether this indicates that this case initiation method is any more or less costly than grand juries. Future studies should explore the cost of each initiation method and should account for whether the preliminary examination is held or waived.

Despite these limitations, this study provided information to better understand felony case initiation and rescheduled preliminary examinations, the impact of both on case outcomes, and some information about the impact of COVID-19 on criminal case processing.

## Appendix

### Appendix A: Variable definitions

Table A.1.a. Definitions of variables.

<i>Variable</i>	<i>Values</i>	<i>How variable was constructed</i>
Most serious offense	Violent Property Drug DWI Other	Determined by first identifying the degree of most serious felony; if different offenses had same most serious degree of felony, classified according to: violent, property, drug, DWI, other in that order
Urban designation	Urban Rural Mixed	Judicial districts include one or more counties. Using the 2013 National Center for Health Statistics' classification of urban-rural areas, derived from the Office of Management and Budget's schema ( <a href="https://www.cdc.gov/nchs/data_access/urban_rural.htm">https://www.cdc.gov/nchs/data_access/urban_rural.htm</a> ), we classified counties as urban or rural. Districts comprised of counties that are all urban or all rural were classified as such; districts that include both were classified as mixed.  Medium metro—Counties in MSAs of populations of 250,000 to 999,999. Small metro—Counties in MSAs of populations less than 250,000. Nonmetropolitan categories Micropolitan—Counties in micropolitan statistical areas. Noncore—Nonmetropolitan counties that did not qualify as micropolitan.
Grand jury in district	Yes No	Relied on several sources of information to construct including court website; automated data indicating that grand jury was used between 2016 and 2021; confirmation from court officials
Pre/post COVID-19 restrictions	Pre Post	Governor Michelle Lujan-Grisham ordered the state to lockdown 3/25/2020; all cases filed before that date are "pre-COVID-19" and those filed on or after that date are "post-COVID-19."

## Counties to Regions

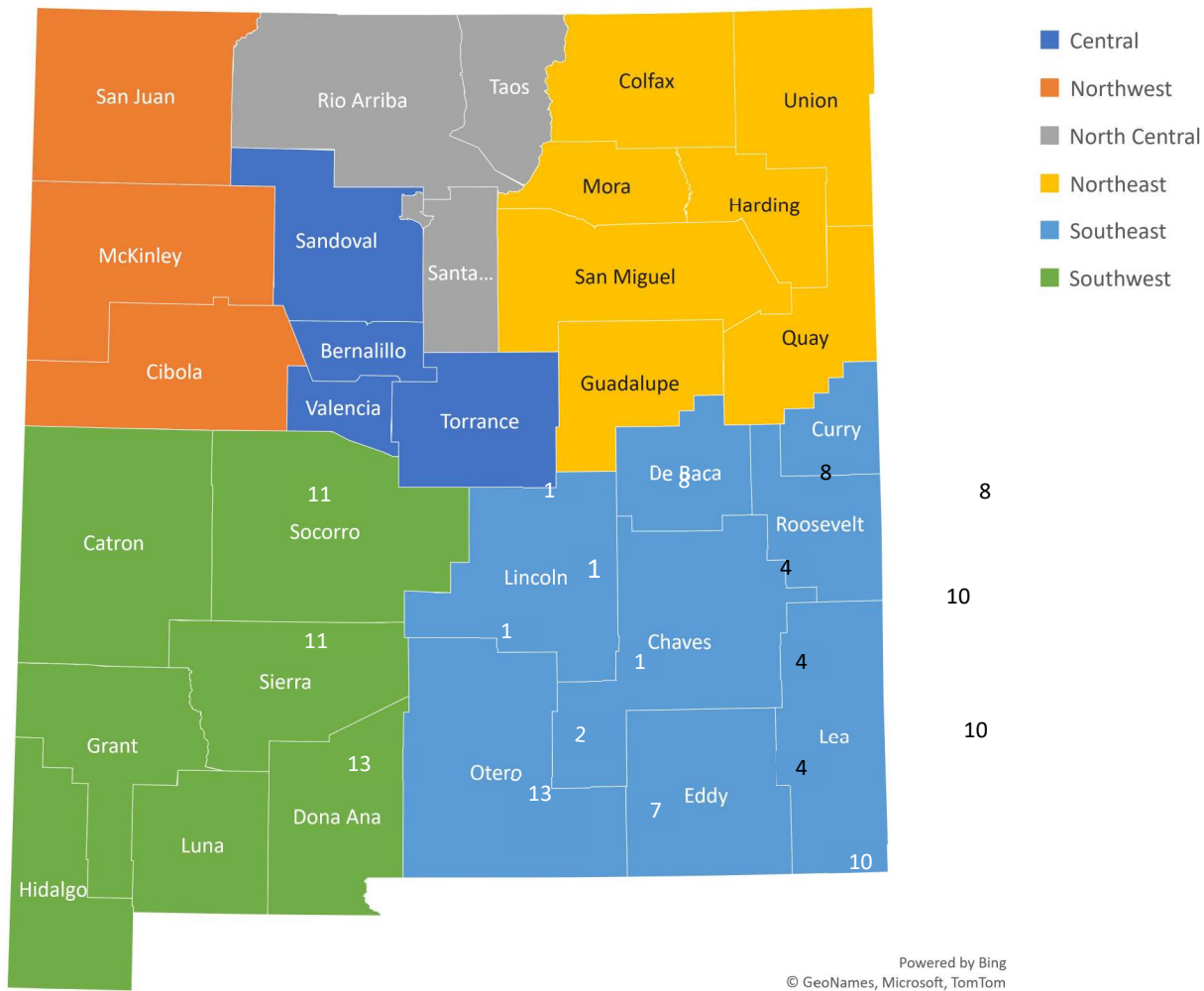
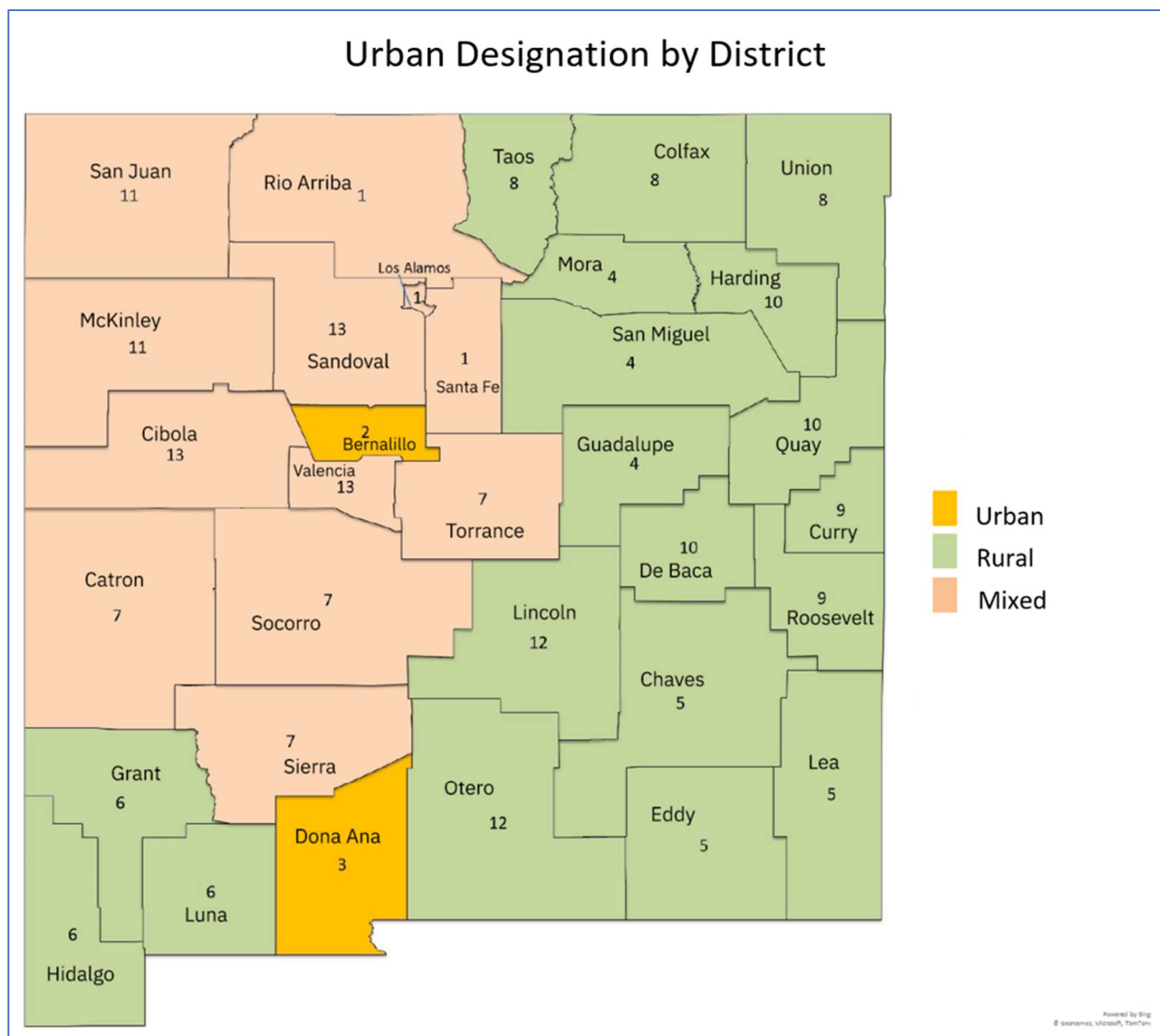


Figure B.2. Map of urban designation



## Appendix C. Supplementary tables

### C.1. Sample characteristics

*Table C.1.a. Offense characteristics.*

	%	N
<b>Most serious offense type at filing</b>		
Violent	37%	152
Property	28%	114
Drug	27%	110
Other	8%	34
<b>Total</b>	<b>100%</b>	<b>410</b>
<b>Degree of most serious charge at filing</b>		
Capital offense	1%	2
1st Degree Felony	1%	5
2nd Degree Felony	9%	37
3rd Degree Felony	22%	90
4th Degree Felony	59%	241
Unspecified Felony	9%	35
<b>Total</b>	<b>100%</b>	<b>410</b>

*Table C.1.b. Use of grand jury; pre- or post-COVID-19 restrictions.*

	%	N
<b>Whether grand jury is used in district - all cases</b>		
No grand jury in last five years	35%	144
Grand jury in last five years	65%	266
<b>Total</b>	<b>100%</b>	<b>410</b>
<b>Whether grand jury is used in district – district court cases only</b>		
No grand jury in last five years	42%	98
Grand jury in last five years	58%	135
<b>Total</b>	<b>100%</b>	<b>410</b>
<b>Pre/Post COVID-19 restrictions</b>		
Pre COVID-19	83%	340
Post COVID-19	17%	70
<b>Total</b>	<b>100%</b>	<b>410</b>

Table C.1.c. Geographic characteristics.

	Percent	N
<b>Region</b>		
Central	38%	155
Northwest	14%	56
North Central	12%	47
Northeast	5%	21
Southeast	19%	79
Southwest	13%	52
<b>Total</b>	<b>100%</b>	<b>410</b>
<b>Urban Designation</b>		
Urban	34%	140
Rural	31%	126
Mixed	35%	144
<b>Total</b>	<b>100%</b>	<b>410</b>
<b>District</b>		
1 <sup>st</sup> Judicial District	10%	41
2 <sup>nd</sup> Judicial District	29 %	118
3 <sup>rd</sup> Judicial District	5%	22
4 <sup>th</sup> Judicial District	2%	10
5 <sup>th</sup> Judicial District	11%	46
6 <sup>th</sup> Judicial District	5%	20
7 <sup>th</sup> Judicial District	3%	13
8 <sup>th</sup> Judicial District	3%	13
9 <sup>th</sup> Judicial District	4%	17
10 <sup>th</sup> Judicial District	2%	6
11 <sup>th</sup> Judicial District	12%	49
12 <sup>th</sup> Judicial District	4%	14
13 <sup>th</sup> Judicial District	10%	41
<b>Total</b>	<b>100%</b>	<b>410</b>

## C.2. Case initiation type, offense, and district use of grand juries

Table C.2.a. Case initiation type, offense type, and district use of grand juries.

	Drug	Other	Property	Violent
<b>Never used grand jury</b>				
Preliminary examination held	5%	9%	11%	15%
Preliminary examination, waived	95%	91%	90%	85%
<b>Total</b>	<b>42</b>	<b>11</b>	<b>19</b>	<b>26</b>
<b>Used grand jury</b>				
Preliminary examination held	11%	14 %	7%	15%
Preliminary examination, waived	42%	29%	30%	27%
Grand jury indictment	44%	43%	57%	57%
Opened in district court by criminal information	3%	14%	7%	2%
<b>Total</b>	<b>36</b>	<b>7</b>	<b>44</b>	<b>48</b>

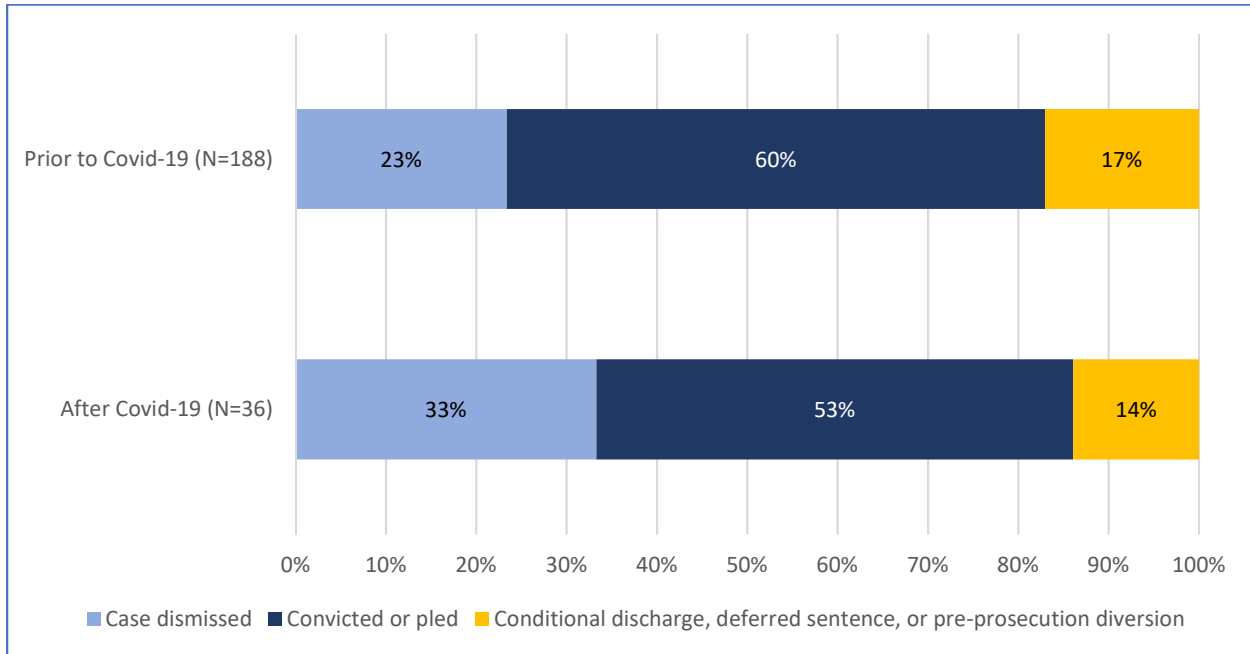
Table C.2.b. Case initiation type, offense degree, and district use of grand juries.

	1st or 2nd Degree Felony	3rd Degree Felony	4th Degree Felony	Felony
<b>Never used grand jury</b>				
Preliminary examination held	27%	4%	7%	33%
Preliminary examination, waived	73%	96%	93%	67%
<b>Total</b>	<b>11</b>	<b>23</b>	<b>61</b>	<b>3</b>
<b>Used grand jury</b>				
Preliminary examination held	10%	13%	10%	17%
Preliminary examination, waived	32%	34%	35%	8%
Grand jury indictment	58%	53%	50%	58%
Opened in district court by criminal information	0.0%	0.0%	6%	17%
<b>Total</b>	<b>19</b>	<b>32</b>	<b>72</b>	<b>12</b>



### C.3. District court case outcomes by COVID-19 restrictions

Figure C.3.a. Outcome of district court case by imposition of COVID-19 restrictions.



N=224, n/s

### C.4. Case disposition, case initiation type, and other characteristics

Table C.4.a. Case outcomes by case initiation type and urban designation.

	Preliminary examination held	Preliminary examination, waived	Grand jury indictment
<b>Urban (N=66)</b>			
Convicted	64%	50%	66%
Sanctioned	64%	63%	70%
<b>Total N</b>	<b>11</b>	<b>8</b>	<b>47</b>
<b>Rural (N=93)</b>			
Convicted	85%	79%	89%
Sanctioned	85%	87%	89%
<b>Total N</b>	<b>13</b>	<b>71</b>	<b>9</b>
<b>Mixed (N=65)</b>			
Convicted	60%	73%	58%
Sanctioned	80%	83%	75%
<b>Total N</b>	<b>5</b>	<b>48</b>	<b>12</b>

Table C.4.b. Case outcomes by case initiation type and COVID-19 restrictions.

	Preliminary examination held	Preliminary examination, waived	Grand jury indictment
<b>Pre-COVID-19 (N=188)</b>			
Convicted	68%	79%	67%
Sanctioned*	74%	89%	73%
<b>Total N</b>	<b>19</b>	<b>106</b>	<b>63</b>
<b>Post-COVID-19 (N=36)</b>			
Convicted	80%	52%	80%
Sanctioned	80%	62%	80%
<b>Total N</b>	<b>10</b>	<b>21</b>	<b>5</b>

\*p<.05

Table C.4. c. Case outcomes by case initiation type and offense severity

	Preliminary examination held	Preliminary examination, waived	Grand jury indictment
<b>1<sup>st</sup> to 2<sup>nd</sup> degree (N=30)</b>			
Convicted	67%	57%	69%
Sanctioned	67%	58%	77%
<b>Total N</b>	<b>3</b>	<b>14</b>	<b>13</b>
<b>3<sup>rd</sup> degree (N=50)</b>			
Convicted	60%	79%	77%
Sanctioned	80%	86%	77%
<b>Total N</b>	<b>5</b>	<b>28</b>	<b>17</b>
<b>4<sup>th</sup> degree (N=144)</b>			
Convicted	76%	77%	63%
Sanctioned	76%	88%	71%
<b>Total N</b>	<b>21</b>	<b>85</b>	<b>38</b>
<b>Felony, unspecified (N=224)</b>			
Convicted	72%	75%	68%
Sanctioned	76%	84%	74%
<b>Total N</b>	<b>29</b>	<b>127</b>	<b>68</b>

Table C.4.d. Case outcomes by case initiation type and offense type

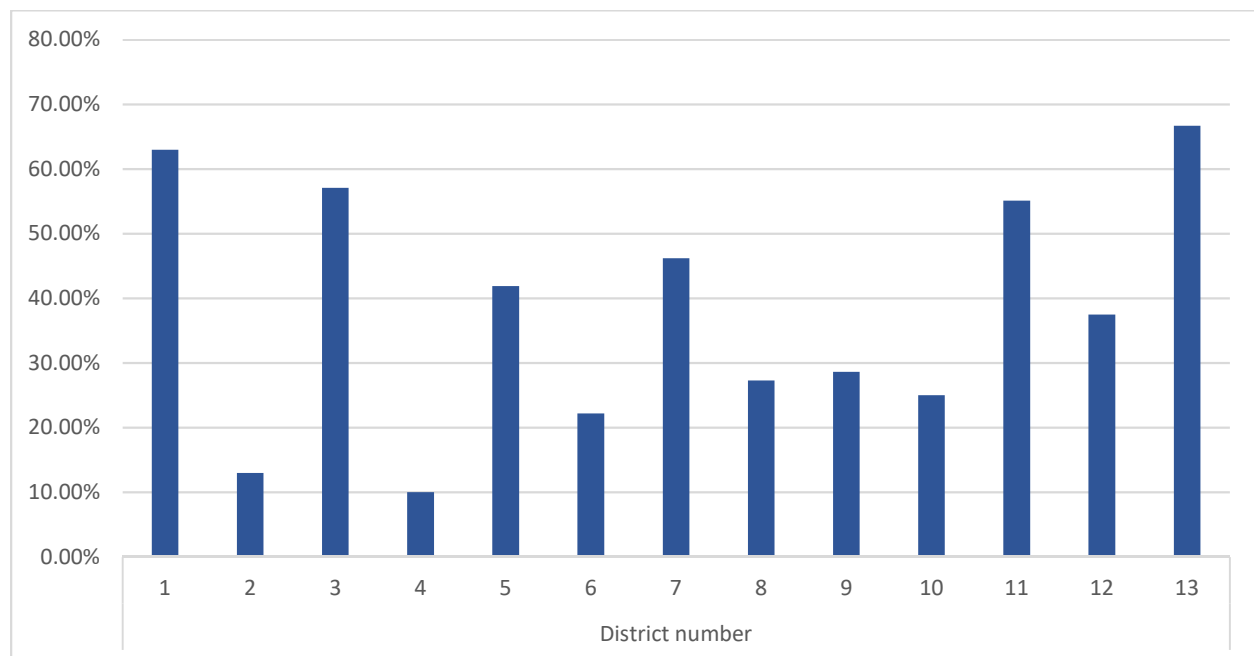
	Preliminary examination held	Preliminary examination, waived	Grand jury indictment
<b>Violent offense (N=70)</b>			
Convicted	58%	76%	80%
Sanctioned	67%	79%	80%
<b>Total N</b>	<b>12</b>	<b>33</b>	<b>25</b>
<b>Property offense (N=59)</b>			
Convicted	86%	79%	58%
Sanctioned	86%	89%	63%
<b>Total N</b>	<b>7</b>	<b>28</b>	<b>24</b>
<b>Drug offense (N=78)</b>			
Convicted	86%	73%	63%
Sanctioned	86%	84%	81%
<b>Total N</b>	<b>7</b>	<b>55</b>	<b>16</b>
<b>Other offense (N=17)</b>			
Convicted	67%	73%	67%
Sanctioned	67%	91%	67%
<b>Total N</b>	<b>3</b>	<b>11</b>	<b>3</b>

Table C.4.e. Case outcomes by district use of grand jury and court case level

Case disposition and use of grand jury used in district		
	Has Grand jury	No Grand jury
<b>Ended in lower court (N=176)</b>	<b>49% (N=131)</b>	<b>31% (N=45)</b>
Convicted, PPD, conditional discharge	11% (N=14)	22% (N=10)
No probable cause, acquitted or dismissed with prejudice	2% (N=2)	13% (N=6)
Dismissed without prejudice, not refiled	88% (N=115)	64% (N=29)
<b>Proceeded to district court (N=234)</b>	<b>51% (N=135)</b>	<b>69% (N=99)</b>
Convicted, PPD, conditional discharge	67% (N=90)	79% (N=78)
Pled in another case	6% (N=8)	3% (N=3)
Nolle prosequi, judge dismissed	24% (N=33)	13% (N=13)
Not yet disposed	3% (N=4)	5% (N=5)
<b>Total</b>	<b>266</b>	<b>144</b>
Convicted, PPD, conditional discharge, pled in another case	<b>42% (N=112)</b>	<b>63% (N=91)</b>
Not convicted	<b>57% (N=150)</b>	<b>34% (N=48)</b>
Not yet disposed	<b>1% (N=4)</b>	<b>3% (N=5)</b>

#### C.5. Rescheduling of preliminary examination hearing by district

Figure C.5.a Proportion of preliminary examination hearings rescheduled by district



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